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# LAWS OF NEW YORK

RELATING TO

## COMMON SCHOOLS,

WITH

COMMENTS AND INSTRUCTIONS,

AND

A DIGEST OF DECISIONS.

PREPARED BY AND UNDER THE DIRECTION OF

VICTOR M. RICE,

SUPERINTENDENT OF PUBLIC INSTRUCTION.

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## PREFACE.

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THE Legislature of 1864 directed the Superintendent of Public Instruction to cause the school laws to be published, with comments, forms and instructions for the information and guidance of school officers and the people generally, but no appropriation was made to pay the expense of their publication until April, 1866. This omission on the part of the Legislature, with a desire on my part that these laws should be perfected in a few important details, and that all the schools should be free, before so considerable an expense should be incurred for a work intended to be a permanent guide, has delayed their publication until this time.

The act of 1864, in which the provisions of the school laws are classified under separate titles and articles, bringing together all those upon the same subject, was an improvement upon any former school act. This volume contains that act, as subsequently amended, in the same order of titles, articles and sections which it has in the statute book. The comments, explanations and forms will, therefore, be readily referred to and understood. An attempt has been made to compress them within as brief a space as was consistent with full statement and clear illustration. It is hoped



that the instructions and comments upon the duties of commissioners in relation to the formation and alteration of districts, the visitation of schools, the examination of teachers, and the apportionment of school moneys, will leave nothing to be explained. Great care has been taken to elucidate, for the benefit of trustees, the law touching the valuation of property, the assessment and collection of taxes, and the making out of tax lists and warrants. The several modes of acquiring title to school-house sites have been explained. The manner of making out the annual reports is fully illustrated. Appended to the special act for the taking of land for sites, page 243, is an instructive essay upon the history of our laws relating to real estate, and the origin and extent of the principle of eminent domain.

Laws about the taxation of banking corporations, all the Normal school acts, and several other statutes affecting the common schools, are included in this volume.

The digest of decisions of the Department of Public Instruction has been increased by many new cases. Obsolete decisions have been omitted. All have been collated and classified under appropriate heads. A digest of the decisions of our Supreme Court and Court of Appeals, pertaining to the School Laws, has been added.

An alphabetical list of all the laws relating to schools has been prepared and inserted.

A table of contents, with a concise abstract of every section of the School law, and a reference to the page where it may be found, precedes the act.

An index, complete in its reference to every important matter contained in the volume, and not so minute as to be confusing and tedious to the examiner, concludes the volume.

PREFACE.

v

A. G. JOHNSON, Esq., has assisted in the preparation of this work. His familiarity with school laws and the history of the school policy of the State, and his legal ability, have enabled him thus to render to me and the public an important service, for which I desire to give him credit.

V. M. R.



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# STATUTES RELATING TO COMMON SCHOOLS.

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## CHAP. 555.

AN ACT to revise and consolidate the General Acts relating to Public Instruction, as amended by subsequent statutes.

Passed May 2, 1864, three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

### TITLE I.

#### OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION, HIS ELECTION AND GENERAL POWERS AND DUTIES.

SECTION 1. The office of State Superintendent of Public Instruction is continued, and the term of said office shall be three years, commencing on a day after an election thereto, and continuing until a successor shall have been duly elected. Such Superintendent shall be elected by joint ballot of the Senate and Assembly, on the first Tuesday of April, one thousand eight hundred and sixty-five, and on the first Tuesday of April next after the occurrence of any vacancy in the office.

The first section of the "act for the establishment of common schools," passed June 19, 1813, provided for the appointment of an officer, to be styled the Superintendent of Common Schools, with a salary of \$300 a year. On the 14th of January, 1813, the Council of Appointment appointed Gideon Hawley, of Saratoga county, Superintendent of Common Schools. He held the office until February 22, 1821, when Welcome Esleeck, of Albany, was appointed. But the Legislature, by a clause in the supply bill, April 3, 1821, abolished the office, and devolved its duties upon the Secretary of State, which officer continued to be, *ex officio*, Superintendent of Common Schools until April 4, 1854, when the



first Superintendent of Public Instruction was elected, under the act of March 30, 1854.

The office was administered by John Van Ness Yates from April 3, 1821, until February 14, 1826, he having been re-appointed by the Legislature, under the Constitution of 1821, on the 13th February, 1823. He was superseded February 14, 1826, by Azariah C. Flagg.

Azariah C. Flagg administered the office until February 1, 1833; John A. Dix administered the office until February 4, 1839; John C. Spencer administered the office until October 11, 1841; Samuel S. Randall, deputy, administered the office until February 7, 1842; Samuel Young administered the office until February 3, 1845; Nathaniel S. Benton administered the office until December 31, 1847; Christopher Morgan administered the office until December 31, 1851; Henry S. Randall administered the office until December 31, 1853; Elias W. Leavenworth administered the office until April 8, 1854; Victor M. Rice, Superintendent of Public Instruction, administered the office until April 7, 1857; Henry H. Van Dyck, Superintendent of Public Instruction, administered the office until April 19, 1861; Emerson W. Keyes, Acting Superintendent of Public Instruction, administered the office until February 1, 1862. Victor M. Rice was elected Superintendent of Public Instruction February 1, 1862, and re-elected April 4, 1865.

§ 2. He shall appoint a deputy; and, in case of a vacancy in the office of Superintendent, the deputy may perform all the duties of the office until the day after the day hereinbefore fixed for an election by the Senate and Assembly. In case the office of both Superintendent and deputy shall be vacant, the Governor shall appoint some person to fill the office, until the Superintendent shall be elected and assume it.

The business of the Superintendent of Common Schools was done by that officer without an assistant or clerk, until the duties were imposed upon the Secretary of State. After that time the work was chiefly performed by a clerk. In 1841 the Legislature authorized the appointment of a general deputy superintendent of common schools, and Samuel S. Randall, who, as clerk under Mr. Dix, had for many years had charge of the school department, was sworn in as general deputy, July 12, by John C. Spencer. He acted as Superintendent from October 11, 1841, until February 7, 1842, Mr. Spencer having resigned his office and accepted from President John Tyler the position of Secretary of War. He continued in the office as deputy until October 1, 1846, when Samuel L. Holmes was appointed in his place. Alexander G. Johnson was appointed in place of Mr. Holmes, February 1, 1848. On the 8th December, 1849, Mr. Johnson having been made deputy secretary of state, Mr. S. S. Randall again became deputy superintendent. January 1, 1852, Henry W. Johnson was appointed in place of Mr. Randall, who was again appointed January 2, 1854, and held the office until the Department of Public Instruction was

created, and Mr. Rice assumed the office, April 8, 1854. He was appointed deputy superintendent of public instruction by Mr. Rice, and served until he accepted the office of superintendent of common schools, in the city of New York. Joseph J. Chambers was appointed in his place, June 14, 1854, but was succeeded by Erasmus Peshine Smith, December 26, 1854. Mr. Smith was succeeded by Emerson W. Keyes, who held the office until August 19, 1865, when Samuel D. Barr was appointed in his place.

§ 3. The Superintendent's office shall continue to be in the State Hall, and maintained at the expense of the State.

§ 4. His salary shall be two thousand five hundred dollars a year, payable quarterly, by the Treasurer, on the warrant of the Comptroller.

§ 5. He may appoint so many clerks as he may deem necessary; but the compensation of such clerks shall not exceed in the aggregate the sum of five thousand dollars in any one year, and shall be payable monthly by the Treasurer, on the warrant of the Comptroller and the certificate of the Superintendent.\*

§ 6. The seal of the Superintendent, of which a description and impression are now on file in the office of the Secretary of State, shall continue to be his official seal, and, when necessary, may be renewed from time to time. Copies of all papers deposited or filed in the Superintendent's office, and of all acts, orders and decisions made by him, and of the drafts or machine copies of his official letters, may be authenticated under the said seal, and, when so authenticated, shall be evidence equally with and in like manner as the originals.

Chapter 129 of the Laws of 1838 provides that no "record, whereof a transcript duly certified may by law be read in evidence, shall be removed by virtue of any subpoena *duces tecum* from the proper office in which such record shall be kept, \* \* \* unless by order of some court of record, made in open court, and entered in the minutes thereof, which order shall specify that the production of such record instead of such transcript is necessary."

The Revised Statutes, section 74, title 3, chapter 7, part 3, provide that "whenever a certified copy of any affidavit, record, document, or other paper is declared by law to be evidence, such copy shall be certified, by the clerk or officer in whose custody the same is required by law to be, to have been compared by him with the original, and to be a correct transcript therefrom and of the whole of such original; and, if such officer have any official seal by law, such certificate shall be attested by such seal." The 76th section of the same title provides

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\* As amended by chapter 520, Laws of 1866.

that "in all cases, where the seal of any court or of any public officer shall be authorized or required by law, the same may be affixed by making an impression directly on the paper, which shall be as valid as if made on a wafer or on wax."

§ 7. The Superintendent shall be, *ex officio*, a trustee of the People's college, and of the New York State asylum for idiots, a Regent of the University of the State of New York, and chairman of the executive committee of the State normal school; he shall have the general supervision of the training school for primary teachers in the city of Oswego, with the powers conferred upon him by chapter four hundred and eighteen of the Laws of eighteen hundred and sixty-three; and he shall provide for the education of the Indian children of the State, as required by chapter seventy-one of the Laws of eighteen hundred and fifty-six.

He is also a trustee of the Cornell university, established at Ithaca, and incorporated by chapter 585, Laws of 1865.

He has also the general supervision of the four normal schools established at Fredonia, Brockport, Cortland and Potsdam, by virtue of chapter 466, Laws of 1866; and of the similar schools authorized at Geneseo, by chapter 195, and at Buffalo, by chapter 583, Laws of 1867.

§ 8. The institution for the instruction of the deaf and dumb, the New York institution for the blind, and all other similar institutions, incorporated, or that may be hereafter incorporated, shall be subject to the visitation of the Superintendent of Public Instruction, and it shall be his duty:

1. To inquire, from time to time, into the expenditures of each institution, and the systems of instruction pursued therein, respectively;

2. To visit and inspect the schools belonging thereto, and the lodgings and accommodations of the pupils;

3. To ascertain, by a comparison with other similar institutions, whether any improvements in instruction and discipline can be made; and for that purpose to appoint, from time to time, suitable persons to visit the schools;

4. To suggest to the directors of such institutions, and to the Legislature, such improvements as he shall judge expedient;

5. To make an annual report to the Legislature on all the matters before enumerated, and particularly as to the condition of the schools, the improvement of the pupils, and their treatment in respect to board and lodging.

§ 9. Every indigent person, resident in this State, between twelve and twenty-five years of age, whose parent or parents, or, if an orphan, whose nearest friend, shall have been resident in this State for the three years preceding, and who may make application for that purpose, shall be received, if deaf and dumb, into the institution for the deaf and dumb; and, if blind, into the New York institution for the blind, provided his or her application be approved by the Superintendent of Public Instruction; and in those cases where, in his opinion, absolute indigence is not established, he may approve of such application, and, at the same time, may impose conditions, whereby some proportionate share of the expense of educating and clothing such pupils shall be paid into the treasury, by their parents, guardians or friends, in such way and manner, and at such time or times, as he shall designate, which conditions he may subsequently modify as he shall deem expedient.

§ 10. Each pupil so received into either of the institutions aforesaid shall be provided with board, lodging and tuition; and the directors of the institution shall receive for each pupil so provided for, the sum of \*        dollars per annum, in quarterly payments, to be paid by the Treasurer of the State, on the warrant of the Comptroller, to the treasurer of said institution, on his presenting a bill showing the actual time and number of such pupils attending the institution, and which bill shall be signed by the president and secretary of the institution, and verified by their oaths. The regular term of instruction for such pupils shall be five years;† but the Superintendent of Public Instruction may, in his discretion, extend the term of any pupil for a period not exceeding three years. The pupils provided for in this and the preceding section of this title shall be designated State pupils; and all the existing provisions of law applicable to State pupils now in said institutions shall apply to pupils herein provided for.

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\* Prior to 1822 the yearly allowance was \$130, but was then increased to \$150.

† Chapter 244, Laws of 1838, had authorized an extension of two years. Section 3 of chapter 272, Laws of 1854, authorizes an extension of three years beyond the full term of eight years, as follows: "§ 3. It shall be lawful for the Superintendent of Public Instruction to continue at the said institution, for a period not exceeding three years, for the purpose of pursuing a course of studies in the higher branches of learning, such pupils, not exceeding twelve in number, as may have completed their full term of instruction, and who may be recommended by the directors of the institution."

The twelve pupils thus selected are known as the "high class."

§ 11. The Superintendent of Public Instruction may make such regulations and give such directions to parents and guardians, in relation to the admission of pupils into either of the above named institutions, as will prevent pupils entering the same at irregular periods.

(1.) INSTITUTION FOR THE DEAF AND DUMB.—The institution for the instruction of the deaf and dumb was incorporated by chapter 264, Laws of 1817, passed April 17. By chapter 238, Laws of 1819, passed April 13, it received from the State \$10,000, and by chapter 250, Laws of 1821, passed April 3, \$2,500. By chapter 234, Laws of 1822, passed April 16, provision was made for the selection of thirty-two indigent deaf and dumb pupils, between the ages of ten and twenty-five years (four from each of the eight Senate districts), on the certificate of the overseers of the poor, to be supported at the expense of the State at \$150 a year each. The supervisors of each county were also authorized to send additional pupils, one for each member of Assembly, at \$150 a year, to be levied and collected in the same manner as moneys raised by the sixth section of the act for support of common schools.

The first section of chapter 97, Laws of 1827, passed March 23, appropriated \$10,000 for the purchase of a site and the erection of a building. The money was not to be paid until the Superintendent of Common Schools should approve the price of the ground and the plan of the buildings. The second section of the act subjected the institution to the supervision and visitation of the Superintendent of Common Schools, in terms nearly the same as the present law, and providing that no money should be paid for the support of pupils, until the directors of the institution had filed in the office of the Secretary of State their assent to the provisions of the second section of the act, and their "consent at all times to permit the inspection and inquiries herein directed."

The consent was given in the following terms, and filed in the Secretary's office April 25, 1827:

INSTITUTION FOR THE DEAF AND DUMB, }  
CITY OF NEW YORK. }

WHEREAS, the Legislature of the State of New York did, on the 23d day of March, 1827, pass an act entitled "An act to provide for the building an asylum for the deaf and dumb in the city of New York," and, whereas, the second section of the said act is in the words following, to wit:

"*And be it further enacted*, That it shall be the duty of the Superintendent of Common Schools, from time to time, to inquire into the expenditures of the said institution and the system of instruction pursued therein, to visit and inspect the schools and the lodging of the pupils, to ascertain, by a comparison with other similar institutions, whether any improvements can be made, and for that purpose appoint such and so many persons, as he shall from time to time deem necessary, visitors of the said schools, to suggest to the directors

and the Legislature such improvements as he shall deem expedient, and to report annually to the Legislature, on all the matters aforesaid, and particularly the condition of the schools, the improvement of the pupils, and their treatment in respect to their board and lodging. And that no money shall be paid out of the treasury, pursuant to this act, until the directors of the institution for the deaf and dumb in the city of New York shall have filed their assent to the provisions of this section, under their corporate seal, in the office of the Secretary of State, and shall thereby consent at all times to submit to the inspection and inquiries herein directed."

Now, therefore, be it known, that the directors of the said institution have assented, and by these presents do assent, to the provisions of the second section of the aforesaid act, and have accordingly directed the same to be signed by the president of the institution, and sealed with their seal, and the same to go into operation when the asylum is built.

Done and subscribed in the city of New York this twenty-third day  
[L. s.] of April, 1827.

SAMUEL L. MITCHILL,

*President.*

Attest:

SAMUEL AKERLY, *Secretary.*

By chapter 170, Laws of 1830, three additional pupils from each of the eight Senate districts were to be selected; by chapter 109, Laws of 1833, five additional pupils from each district; by chapter 238, Laws of 1836, three additional pupils from each Senate district; by chapter 174, Laws of 1840, one additional pupil from each district; by chapter 14, Laws of 1845, four additional from each district; by chapter 97, Laws of 1852, one additional from each of the thirty-two Senatorial districts; by chapter 272, Laws of 1854, page 595, every indigent deaf and dumb person in the State could be received into the institution on conditions which have been since continued, and are substantially retained in sections eight, nine, ten and eleven of this title.

The following two sections of chapter 223, Laws of 1832, are still in force:

§ 1. It shall be the duty of the overseers of the poor in each town to furnish the Superintendent of [Public Instruction] with a list of the deaf and dumb persons in their respective towns, so far as they can ascertain them, with such particulars in relation to the condition of each as shall be prescribed by the Superintendent.

§ 2. From the list thus obtained the Superintendent may select, as State pupils, such as are properly embraced within the provisions of existing laws, and make such regulations, and give such directions to parents and guardians, in relation to the admission of pupils, at stated periods, as will remove the inconvenience of having pupils of the same class entering the school at different periods.

By chapter 325, Laws of 1863, page 546, passed April 25, provision was made for the instruction of deaf mutes between the ages of six and twelve years, as follows:

§ 1. Whenever a deaf mute child, under the age of twelve years, shall become a charge for its maintenance on any of the towns or counties of this State, or shall be liable to become such charge, it shall be the duty of the overseers of the poor of such town, or of the supervisors of such county, to place such child in the New York institution for the deaf and dumb.

§ 2. Any parent, guardian or friend of a deaf mute child within this State, over the age of six years, and under the age of twelve years, may make application to the overseers of the poor of any town, or to any supervisor of the county where such child may be, showing, by satisfactory affidavit, or other proof, that the health, morals or comfort of such child may be endangered, or not properly cared for; and thereupon it shall be the duty of such overseer or supervisor, if satisfied that the parents or natural protectors of such child are, or said child is, in indigent circumstances, to place such child in the New York institution for the deaf and dumb.

§ 3. The children placed in said institution, in pursuance of the foregoing sections, shall be maintained therein at the expense of the county from whence they came, provided that such expense shall not exceed one hundred and fifty dollars each per year, until they attain the age of twelve years, unless the directors of said institution shall find, as to any such child, that it is not a proper subject to remain in said institution.

§ 4. The expenses for the board, tuition and clothing for such deaf mute children, placed as aforesaid in said institution, not exceeding the amount of one hundred and fifty dollars per year, above allowed, shall be raised and collected as are other expenses for the support of the poor of the county from which such children shall be received; and the bills therefor, properly authenticated by the principal, or one of the officers of said institution, shall be paid to said institution by the said county; and its county treasurer or chamberlain, as the case may be, is hereby directed to pay the same on presentation, so that the amount thereof may be borne by the proper county.

In pursuance of section eleven the Superintendent has prescribed the following questions to parents and guardians of deaf mutes:

In the case of each pupil admitted into the New York institution for the instruction of the deaf and dumb, it is desirable to obtain answers to the following questions. The information asked for is designed, in part, to aid in researches into the causes of deafness, but mainly for the benefit or information of the pupil himself. The answers should be written on the blank spaces, and the paper returned to this office without delay. Particular attention to this subject is required.

1. What is the name and age of the deaf mute? If he has a middle name, it should be given in full. Add the place, and the day, month and year of birth.

2. Was he born deaf? and if so, was there any cause which is supposed to have operated before birth? If not, at what age did he lose his hearing? and by what disease or accident? Mention his place of residence at the time of the loss of hearing.



3. Was his place of birth, or of residence at the time of the loss of hearing, reputed to be healthy or unhealthy? and if unhealthy, for what reasons? Was the dwelling of the family at that time comfortable or uncomfortable? *e. g.*, was it in a basement, in an unfinished house, in rooms with unplastered walls, or the like? Was its situation low and damp, or otherwise? Was the deaf child more exposed to cold and dampness than the other children not deaf?

4. Is the deafness total or partial? If the latter, what is the degree of hearing? *e. g.*, can he distinguish words uttered in a raised voice? or hear the human voice at all?

5. Have any attempts been made to remove the deafness? and if so, what are the results?

6. Is there any, and if any, what degree, of ability to articulate, and to distinguish words by the motions of the lips?

7. Have any attempts been made to communicate instruction? Has the deaf mute learned to write after a copy? Does he know the meaning of any written words? Has he acquired any art or trade, or been accustomed to steady employment?

8. How, and to what extent, can the family and intimate friends communicate with the deaf mute?

9. Does he show any signs of idiocy? Is he afflicted with palsy, nervous trembling, malformation of the limbs, defective vision, or similar bodily infirmities?

10. Has the deaf mute had the small pox, or been vaccinated? Has he had the scarlet fever, measles, mumps, or whooping cough?

11. Are there any other cases of deafness in the same family? And are there any known cases of deafness among the ancestors, or the collateral branches of kindred? In each case give the name, degree of relationship, age, if living (if not, the age at death, and cause of death, if known), whether educated or not, and if adults, whether married and parents or not.

12. Have there been any cases of blindness, idiocy or insanity in the same family, or among the near connections? If so, give the particulars.

13. What are the names, ages, place of nativity and present residence, occupation and state of health of the parents? Give the Christian name of each parent, and the mother's maiden name.

14. Give the name and most convenient post-office of the person who will correspond with the deaf mute, or with the officers of the institution in his behalf.

15. Is either of the parents dead? Has either been married more than once? If so, to whom?

16. Was there any relationship between the parents before marriage? *e. g.*, were they cousins?

17. Give the names of all their children (the deaf mute included) in the order of their ages, distinguishing those who were the children of another marriage, and noting which, if any, are dead or married. If any are married, state to whom.

*Form of Certificate to be made by Overseer of the Poor.*

The undersigned, overseer of the poor of the town of , in the county of , do hereby certify that , of said town, is deaf and dumb. The said was years of age on the day of , 186 , is of good moral character, free from disease, and possesses intellectual faculties capable of instruction.

The names of the parents of the said are , and the said ha not sufficient pecuniary ability to pay for the board, tuition or clothing\* of said at the New York institution for the instruction of the deaf and dumb ; and I would recommend to the favorable consideration of the Superintendent of Public Instruction.

Dated 186

*Overseer of the Poor of the Town of*

To the Superintendent of Public Instruction, Albany.

Circumstances of Parent or Guardian :

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*Circular to Supervisors.*

## INSTITUTION FOR THE DEAF AND DUMB.

SUPERINTENDENT'S OFFICE,  
DEPARTMENT OF PUBLIC INSTRUCTION, }  
Albany, , 186 . }

*To the Board of Supervisors of the County of*

By provision of an act of the Legislature in relation to the New York institution for the instruction of the deaf and dumb, passed April 25, 1864 (chapter 386), "the supervisors of any county in this State, from which county pupils may be selected, whose parents or guardians are unable to furnish them with suitable clothing, are authorized and required to raise in each year for this purpose, for each such pupil from said county, the sum of thirty dollars."†

\* The overseers are requested to state whether the parent or guardian has any real or personal property, liable to taxation, and if any, the value ; what is the occupation and the probable yearly income of the parent, and whether, in the opinion of the overseers, the parent or guardian is unable to provide clothing for the pupil. If the circumstances of the parent or guardian are such that they could clothe a child in possession of all its faculties, it is difficult for the department to understand why they cannot provide clothing for it equally well now that misfortune has befallen it, especially as the State proposes to assume the burden of its board and tuition. It must be remembered that, if the parents are shown to be unable to provide clothing, this then becomes a county charge. The State does not furnish clothing.

† Chapter 244, Laws of 1838, page 233, passed April 18, required the sum of \$20 to be raised.

A certificate has been produced to me, signed by \_\_\_\_\_, overseer of the poor, that \_\_\_\_\_, of \_\_\_\_\_, in your county, is a proper candidate for selection as a State pupil at the New York institution for the instruction of the deaf and dumb, and that \_\_\_\_\_ parents are unable to pay for \_\_\_\_\_ board and tuition or to clothe \_\_\_\_\_ at the institution. \_\_\_\_\_ has been selected by me for admission into the said institution for the term of \_\_\_\_\_ years from \_\_\_\_\_, 186 . It will, therefore, be your duty, under the act aforesaid, at your next annual meeting, to raise the sum necessary to pay for \_\_\_\_\_ clothing. As the law limits the amount to \$30, the institution will provide clothing for that sum, although it is obviously inadequate. You will, therefore, raise the sum during each year for which the pupil has been selected. If \_\_\_\_\_ is dismissed, due notice will be given.

I will thank your clerk for a copy of the resolution of your board on this subject.

The principal of the institution will draw on your county treasurer, some time after the month of February, in each year, for the amount so raised.

Your obedient servant,

*Superintendent of Public Instruction.*

(2.) INSTITUTION FOR THE BLIND. — This institution was incorporated by chapter 214, Laws of 1831. Chapter 316, Laws of 1834, passed May 6, authorized it to receive, from each of the eight Senate districts, four indigent pupils, between eight and twenty-five years of age, on the same terms as the institution for the deaf and dumb, during a period not exceeding five years, to be supported, educated and instructed in some useful trade.

Chapter 226, Laws of 1836, page 293, passed April 30, as amended by chapter 399 of the same year, page 593, appropriated \$12,000 to procure a site and erect buildings on condition that \$8,000 should be raised in New York for the same purpose. The managers were required annually, February 1, to make, under oath, to the Legislature, a report of their proceedings, and of the disposition of the moneys paid to them from the treasury of the State. Provision was also made for four additional pupils from each Senate district. By chapter 200, Laws of 1839, page 171, passed April 18, eight additional pupils were to be admitted, and \$15,000 were appropriated to complete the buildings. The commissioners of common schools were required to apportion school money to the institution according to the number of pupils, without regard to their age. An extension of the term of any pupil could be granted with the approbation of the Superintendent of Common Schools, and the institution was subjected to the visitation and inspection of the Superintendent. By chapter 333, Laws of 1852, page 496, passed April 16, the institution was permitted to receive four indigent pupils from each of the thirty-two Senate districts. By the last act, also, the charter was continued in force without limitation of time. By chapter 539, Laws of 1855, page 1018, passed April 14, provision was made for the reception into the institution of every indigent blind person in the State, between the ages of twelve and twenty-five years, whose parent or parents, or, if an orphan, whose

nearest friend, shall have been a resident in this State, and who may make application for that purpose, there to be instructed in literary or school education, and in some trade or employment, now or hereafter to be taught and carried on in said institution, provided his or her application be first approved by the Superintendent of Public Instruction.

Chapter 200, section 5, Laws of 1839, also provided that "the supervisors of any county in this State (from which State pupils may be sent and received into said institution, whose parents or guardians are unable to furnish them with suitable clothing) are hereby authorized and required, while such pupils are under instruction, to raise a sum of money for this purpose, not exceeding twenty dollars in any one year, for each pupil from said county."

By chapter 351, section 1, Laws of 1862, page 563, passed April 19, the sum to be annually paid was raised to \$30. It was also provided that if the money should not be paid for six months after the annual meeting of the supervisors of any county, the sum unpaid should, from the end of that time, bear interest at the rate of seven per cent. If county paupers are sent to said institution, the supervisors are also required to raise and pay to the order of the Comptroller a sum equal to that which the county would have to pay for the support and clothing of such pupils at home.

Section two of said act also provided that "the Superintendent of Public Instruction is hereby authorized to visit and inspect the New York institution for the blind, in all its departments, to report to the Legislature such matters and things as he may deem necessary, and in the selection and appointment of pupils he may, in those cases where, in his opinion, absolute indigence is not established, require and impose conditions, whereby some proportionate share of the expenses of educating and clothing such pupils shall be paid by their parents or guardians, in such way, manner and time as he may designate."

*Form of Certificate to be made by Overseers of the Poor.*

STATE OF NEW YORK:

The undersigned, overseers of the poor of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby certify that \_\_\_\_\_, of the said town, is blind, that \_\_\_\_\_ was \_\_\_\_\_ years of age on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_; moral character is good, and \_\_\_\_\_ is free from disease other than that of the eyes, and that \_\_\_\_\_ possesses mental and physical faculties capable of instruction.

The names of \_\_\_\_\_ parents are \_\_\_\_\_, who reside in the town of \_\_\_\_\_, and have not sufficient pecuniary ability to pay for the board or tuition of the said \_\_\_\_\_ at the New York institution for the blind. We do recommend \_\_\_\_\_ to the favorable consideration of the Superintendent of Public Instruction. We do further certify that we have good evidence that the answers to the following questions are correct.

*Ques. 1.*—Is the blindness of applicant temporary or permanent? *Ans.*—

*Ques. 2.*—Was \_\_\_\_\_ born blind? *Ans.*—

*Ques. 3.*—Were both or either of \_\_\_\_\_ parents blind? and which, and how long? *Ans.*—

*Ques. 4.*—Were the parents related before marriage? and what was that relationship? *Ans.*—

*Ques. 5.* What other causes of blindness have occurred in the families of the parents? *Ans.*—

*Ques. 6.*—Has the applicant any blind brothers, sisters or cousins? *Ans.*—

*Ques. 7.*—Was the blindness of applicant caused by accident? If so, describe when and how it occurred. *Ans.*—

*Ques. 8.*—Was the blindness caused by disease? if so, describe it and any operation on the eyes. *Ans.*—

*Ques. 9.*—What are the pecuniary circumstances of the parents or guardian? \* *Ans.*—

Dated this                      day of                      , 18 . Town of                      , County of                      ,

} *Overseer of the Poor.*

*To the Superintendent of Public Instruction, Albany, N. Y.*

*Circular to Boards of Supervisors.*

INSTITUTION FOR THE BLIND, STATE OF NEW YORK.

SUPERINTENDENT'S OFFICE,  
DEPARTMENT OF PUBLIC INSTRUCTION, }  
Albany, 186 . }

*To the Board of Supervisors of the County of                      :*

By the existing provisions of law, the supervisors of any county from which State pupils may be selected for admission to the New York institution for the                      are required to raise a sum of money annually, for the purpose of providing suitable clothing for any such pupil whose parents or guardians are unable to furnish it; but such sum is not to exceed, for each pupil, \$30. Chapter 351, Laws of 1862.

A certificate has been produced to me, signed by                      , that                      , of                      , in your county, is a proper candidate for selection as a State pupil at the institution for the                      , and that parents are unable to pay for                      board and tuition, or to clothe                      at the institution.                      ha been selected by me for admission into the said

\* Upon this point the overseers are requested to state whether the parent or guardian has any real or personal property liable to taxation, and if any, the value; what is the occupation and the probable yearly income of the parent, and whether, in the opinion of the overseers, the parent or guardian is unable to provide clothing for the pupil. If the circumstances of the parent or guardian are such that they could clothe a seeing child, it is difficult for the department to understand why they cannot provide clothing for it equally well now that misfortune has befallen it, especially as the State proposes to assume the burden of its board and tuition. It must be remembered, that if the parents are shown to be unable to provide clothing, this then becomes a county charge. The State does not furnish clothing.

institution for the term of        years, from        186 . It will, therefore, be your duty, under the act aforesaid, at your next annual meeting, to raise the sum necessary to pay for        clothing. As the law limits the amount to \$30, the institution will provide clothing for that sum, although obviously inadequate. You will, therefore, raise the sum during each year, for which the pupil        selected. If        dismissed, due notice will be given.

The principal of the institution will draw on your county treasurer, some time after the month of February, in each year, for the amount so raised.

Your obedient servant,

*Superintendent of Public Instruction*

*Certificate of Selection of Deaf and Dumb and Blind Pupils.*

STATE OF NEW YORK.

SUPERINTENDENT'S OFFICE,  
DEPARTMENT OF PUBLIC INSTRUCTION, }  
Albany,        , 186 . }

DEAR SIR: I have this day selected        , of        , county of        , aged        years (parents        P. O.,        ), as a State pupil in the New York institution for the for the term of        years from the        day of        186 ; to be educated and supported therein during that period, at the expense of the State. Clothing will be furnished by the        .

Respectfully yours,

*Superintendent of Public Instruction.*

§ 12. The Superintendent may, in his discretion, appoint persons to visit and examine all or any of the common schools in the county wherein such persons reside, and to report to him all such matters respecting their condition and management, and the means of improving them, as he shall prescribe; but no allowance or compensation shall be made to such visitors for their services or expenses.

This section is copied from section 8, chapter 330, Laws of 1839. Soon after its passage visitors were appointed in all the counties of the State. The visitors did not generally enter upon the work. Of the 10,700 school districts in the State at that time, only 1,865 were visited. From twenty-three counties no reports were received. The Superintendent of Common Schools sent to the Legislature, April 13, 1840, an abstract of the reports received by him, which

were published in Assembly Document No. 307. The power vested in the Superintendent by this section has not since been exercised.

§ 13. So often as he can, consistently with his other duties, he shall visit such of the common schools of the State as he shall see fit, and inquire into their course of instruction, management and discipline, and advise and encourage the pupils, teachers and officers thereof.

§ 14. He shall submit to the Legislature an annual report, containing :

1. A statement of the condition of the common schools of the State, and of all other schools and institutions under his supervision, and subject to his visitation as Superintendent ;

2. Estimates and accounts of expenditures of the school moneys, and a statement of the apportionment of school moneys made by him ;

3. All such matters relating to his office, and all such plans and suggestions for the improvement of the schools and the advancement of public instruction in the State, as he shall deem expedient.

The Revised Statutes, section 1, title 2, chapter 15, part 1, 4th edition, declared it the duty of the Superintendent of Common Schools "to prepare and submit an annual report to the Legislature, containing,

"1. A statement of the condition of the common schools of the State ;

"2. Estimates and accounts of expenditures of the school moneys ;

"3. Plans for the improvement and management of the common school fund and for the better organization of the common schools ; and

"4. All such matters relating to his office and to the common schools as he shall deem expedient to communicate."

Chapter 350 of the Laws of 1847, page 452, in relation to reports of State officers, requires them (including the Superintendent of Common Schools) "to complete their several annual reports for the previous fiscal year, before the expiration of the current calendar year, and cause the same to be presented to the Legislature immediately after the commencement of its next annual session." It also requires them to embrace in said annual reports a true account, so far as the same is practicable, of the funds and accounts of which each of said officers is in charge, to the termination of the current calendar year.

§ 15. He may, on the recommendation of any school commissioner, or on other evidence satisfactory to him, grant, under his hand and seal of office, a certificate of qualification, and may, upon the like recommendation or evidence, revoke the same.

While unrevoked, such certificate shall be conclusive evidence that the person to whom it was granted is qualified, by his moral character, learning and ability, to teach any common school in the State. He may also issue temporary licenses to teach, limited to any school commissioner district or school district, and for a period not exceeding six months, whenever, in his judgment, it may be necessary or expedient for him to do so.

§ 16. Upon cause shown to his satisfaction, he may annul any certificate of qualification granted to a teacher by a school commissioner, or declare any diploma issued by the State normal school ineffective and null as a qualification to teach a common school within this State, and he may reconsider and reverse his action in any such matter.

§ 17. He shall prepare and keep in his office alphabetical lists of all persons who have received, or shall receive, certificates of qualification from himself, or diplomas of the State normal school, with the dates thereof, and shall note thereon all annulments and reversals of such certificates and diplomas, with the date and causes thereof, together with such other particulars as he may deem expedient.

§ 18. Whenever it shall be proven, to his satisfaction, that any school commissioner, or other school officer, has been guilty of any willful violation or neglect of duty under this act, or any other act pertaining to common schools, or of willfully disobeying any decision, order or regulation of the Superintendent, the Superintendent may, by an order under his hand and seal, which order shall be recorded in his office, remove such school commissioner or other school officer from his office.

This section is an amplification of section 15, chapter 382, of the Laws of 1849.

When it becomes necessary to ask the removal of a school officer, under the foregoing section, the following practice must be pursued: An affidavit or affidavits must be prepared and duly verified before some officer authorized to administer oaths, charging him with one or more of the offenses of which he is supposed to have been guilty, and which are above enumerated, as with having "embezzled money coming to his hands for school purposes," or with the willful neglect of some specified duty, or with disobeying some decision or order of the Department of Public Instruction, setting out the date of such order and its requisition in words or in substance. The affidavit, after distinctly stating the *charge*, should proceed with a specification of the facts by which it is established, which must be set forth with such certainty as to time, place,



etc., as to furnish the officer with precise information as to what he is expected to meet, and to enable him to look for repelling testimony. After being verified, a copy of the affidavits, including the *jurat* or certificate of the officer administering the oath, must be served upon the officer whose removal is sought, together with a notice of the application, which may be substantially in the following form :

SIR: Take notice that the affidavits, with copies of which you are herewith served, will be presented to the Superintendent of Public Instruction at Albany, and application thereupon made for your removal from the office of trustee of Joint District No.     , of Shandaken, in Delaware county, and Denning, in Ulster county; and that you are required to transmit your answer to such application, duly verified, to the Department of Public Instruction within ten days after the service hereof, or the charges contained in such affidavits will be deemed to be admitted by you.

Your obedient servant,

A——— B———.

Post-office address, Port Jervis, Orange Co.

A copy of this notice, together with an *affidavit* proving the service thereof and of the affidavits therein referred to, and the date and manner of such service, must be transmitted, with the original affidavits, to the Department of Public Instruction. No fact, although otherwise known to the department, will be taken into consideration, nor will any paper be read or referred to, in disposing of the case, unless evidence is furnished that a copy of such paper has been served upon the party against whom the complaint is made. He cannot be prejudiced by any statement which he has not been called upon to answer.

The form of the notice above given indicates the course of the respondent. He is to transmit his sworn answer, together with the affidavits of other persons, if he deems them necessary, to the department within ten days. If, for any reason, as the absence of material witnesses, he is unable to complete his defense in that time, he should before its expiration transmit his own answer duly verified, with a statement, under oath, of the facts which render it necessary that the time to procure further evidence should be extended, and stating the earliest day at which he expects to be able to obtain such evidence. If a probable defense appears from his answer, and the application for further time is reasonable, an order will be made granting it.

Both parties should have their affidavits, etc., legibly written upon legal cap paper, if practicable, and upon the same sheet or continuous sheets, written on both sides, and fastened together in the manner of legal pleadings, and not upon separate scraps of paper. They should be indorsed with a title; indicating the nature of the application, and the district, town and county where the matter arose, together with the *post-office address* of the person transmitting them. Though these may appear trifling minutiae, the neglect of them produces great embarrassment and delay in a public office which is burdened with a very extensive correspondence.

§ 19. He shall prepare suitable registers, blanks, forms and regulations for making all reports and conducting all necessary business under this act, and shall cause the same, with such information and instructions as he shall deem conducive to the proper organization and government of the common schools, and the due execution of their duties by school officers, to be transmitted to the officers and persons intrusted with the execution of the same.

This section is substantially the same as section 38 of chapter 159, Laws of 1819, page 187. The registers to be used by teachers in keeping an account of the attendance at school, and the blanks for the report of trustees to school commissioners, are prepared late in the summer of each year, and are sent by the department to school commissioners; by those officers they are usually transmitted to town clerks, and by town clerks to the trustees of school districts.

For the duties imposed upon town clerks in this matter, see subdivision 5, section 1, title 5, *post*.

## TITLE II.

### OF THE SCHOOL COMMISSIONERS, THEIR ELECTION, POWERS AND DUTIES.

SECTION 1. The office of school commissioner is continued, and the present incumbents shall continue in office in their respective districts for the residue of the terms for which they were elected or appointed.

§ 2. The districts as organized under existing laws, and as recognized in the election of school commissioners at the annual election in eighteen hundred and sixty-three, shall continue to be held and regarded as the school commissioner districts in this State, except as the same shall be altered or modified by the Legislature.

§ 3. The school commissioner for each school commissioner district shall be elected by the electors thereof, by separate ballot, at the general election, in the year one thousand eight hundred and sixty-six, and triennially thereafter, and the ballots shall be indorsed "school commissioner." The laws regulating the election of and canvassing the votes for county officers shall

apply to such elections. And it shall further be the duty of county clerks, and they are hereby required, as soon as they shall have official notice of the election or appointment of a school commissioner, for any district in their county, to forward to the Superintendent of Public Instruction a duplicate certificate of such election or appointment, attested by their signature and the seal of the county.

When the school commissioner districts were first created by the statute of 1856, they coincided in boundaries, very nearly, with the Assembly districts. Since that time the Assembly districts have been changed in many counties; and the school commissioner districts have been altered in some instances by statute, and in others by the boards of supervisors, under section 4, chapter 179, Laws of 1856. By the second section of this title the present districts remain unchanged, until altered by act of the Legislature. By the third section, the school commissioner must be elected on a *separate ballot*, and of course the inspectors of election must provide a separate box.

§ 4. The term of office of such commissioner shall commence on the first day of January next after his election, and shall be for three years and until his successor qualifies. Every person elected to the office, or appointed to fill a vacancy, must take the oath of office prescribed by the Constitution, before the county clerk, or a judge of a court of record, and file it with the county clerk, within ten days after the commencement of the term, or after notice of his appointment; and if he omit so to do, the office shall be deemed vacant.

It will be observed that every school commissioner can hold his office, even after his term of three years has expired, until the person elected as his successor shall have taken and filed his oath of office, but not longer than ten days.

This oath must be in the following form :

"I do solemnly swear (*or affirm, as the case may be*) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of school commissioner according to the best of my ability.

"Sworn before me this      day of      , 18    ."

This oath or affirmation must be subscribed and taken before the county clerk, or a judge of a court of record. It cannot, therefore, be taken before any other officer. If the oath be not filed within ten days, then the office is vacant, as the previous incumbent can hold over ten days only.

§ 5. A commissioner may, at any time, vacate his office, by filing his resignation with the county clerk. His removal from the county, or his acceptance of the office of supervisor, town clerk or trustee of a school district, shall vacate his office.

§ 6. The county clerk, so soon as he has official or other notice of the existence of a vacancy in the office of commissioner, shall give notice thereof to the county judge, or if that office be vacant, to the Superintendent of Public Instruction. In case of a vacancy the county judge, or if there be no county judge, then the Superintendent, shall appoint a commissioner, who shall hold his office until the first of January succeeding the next general election, and until his successor, who shall be chosen at such general election, shall have qualified. A person elected to fill a vacancy shall hold the office only for the unexpired term.

§ 7. Every school commissioner shall receive an annual salary of eight hundred dollars, payable quarterly, by the Treasurer, on the warrant of the Comptroller and the certificate of the Superintendent of Public Instruction, out of the income of the United States deposit fund appropriated to this purpose, or to the support of common schools.

§ 8. Whenever a majority of the supervisors from all the towns composing a school commissioner district shall adopt a resolution to increase the salary of their school commissioner, beyond the five hundred dollars payable to him from the United States deposit fund, it shall be the duty of the board of supervisors of the county to give effect to such resolution, and they shall assess the increase stated therein upon the towns composing such commissioner district ratably, according to the corrected valuations of the real and personal estate of such towns.

§ 9. The board of supervisors shall annually audit and allow to each commissioner within the county the fixed sum of two hundred dollars for his expenses, and assess and levy that amount annually by tax upon the towns composing his district.

Chapter 84, Laws of 1867, increased the salary of the school commissioners, payable from the United States deposit fund, from *five* to eight hundred dollars a year. Although section eight is not amended in terms, it might be considered amended by force of the amendment of the seventh section, the words five hundred in the eighth section, being a mere reference to or recital of the

seventh section; and for the further reason that the later law repeals a previous statute.

§ 10. Whenever the Superintendent of Public Instruction is satisfied that a school commissioner has persistently neglected to perform his duties, he may withhold his order for the payment of the whole or any part of such commissioner's salary as it shall become due, and the salary so withholden shall be forfeited; but the Superintendent may remit the forfeiture, in whole or in part, upon the commissioner disproving or excusing such neglect.

§ 11. A commissioner, upon the written request of the commissioner of an adjoining district, may perform any of his duties for him, and upon requirement of the State Superintendent of Public Instruction must perform the same.

The jurisdiction of the school commissioner is strictly limited to the district for which he is elected. But the commissioner may at times be necessarily absent, or he may from sickness or injury be unable to perform his duties, or he may be incapacitated by some legal disability. In such cases his written request, or the requirement of the Superintendent of Public Instruction, will call to his aid another commissioner of an adjoining district.

But whenever a commissioner is so called upon to exercise any powers or perform any duties out of his own jurisdiction, and the acts are of an important and permanent character, such as ought to be recorded or be put in writing, as for instance certificates, or alterations of districts, he should in every written instrument recite the written request, under which he is acting, substantially or in full. It would also be advisable to file such written request in the office of the county clerk, for safe keeping and future reference, in case any question should arise as to the validity of his acts.

§ 12. No school commissioner shall act as agent for any author, publisher or bookseller, nor directly or indirectly receive any gift, emolument, reward or promise of reward, for his influence in recommending or procuring the use of any book, or school apparatus, or furniture of any kind whatever, in any common school, or the purchase of any book for a district library. Any one who shall procure or solicit a violation of this provision, or any part thereof, shall be guilty of a misdemeanor; and any such violation shall subject the guilty commissioner to removal from his office by the Superintendent of Public Instruction.

A serious charge against county superintendents was that they acted as book agents; how many, if any, were liable to such a charge cannot be deter-

mined. The present law relieves them not only from numerous importunities, but from the imputation of recommending text books on account of self-interest. It is very desirable that the books used in the same school should be uniform; but it is not desirable, among the first and prominent acts of the commissioners, to make a general change of text books. The reforms in the schools depend more upon the teacher than upon the influence of any series of books.

§ 13. Every commissioner shall have power, and it shall be his duty:

1. From time to time to inquire and ascertain whether the boundaries of the school districts within his district are definitely and plainly described in the records of the proper town clerks; and in case the record of the boundaries of any school district shall be found defective or indefinite, or if the same shall be in dispute, then to cause the same to be amended, or an amended record of the boundaries to be made.

2. To visit and examine all the schools and school districts within his district as often in each year as shall be practicable; to inquire into all matters relating to the management, the course of study and mode of instruction, and the text books and discipline of such schools, and the condition of the school-houses, sites, out-buildings and appendages, and of the district generally; to examine the district libraries; to advise with and counsel the trustees and other officers of the districts in relation to their duties, and particularly in respect to the construction, warming and ventilation of school-houses, and the improving and adorning of the school grounds connected therewith; and to recommend to the trustees and teachers the proper studies, discipline and management of the schools, and the course of instruction to be pursued.

3. Upon such examination, to direct the trustees to make any alteration or repair on the school-house or out-buildings which shall, in his opinion, be necessary for the health or comfort of the pupils, but the expense of making such alterations or repairs shall in no case exceed the sum of two hundred dollars, unless an additional sum shall be voted by the district. He may also direct the trustees to abate any nuisance in or upon the premises, provided the same can be done at an expense not exceeding twenty-five dollars.

4. In concurrence with the supervisor of the town in which a school-house is situated, by an order under their hands, reciting

the reason or reasons, to condemn such school-house, if they deem it wholly unfit for use and not worth repairing, and to deliver the order to the trustees, or one of them, and transmit a copy to the Superintendent of Public Instruction. Such order, if no time for its taking effect be stated in it, shall take effect immediately. They shall also state what sum, not exceeding eight hundred dollars, will, in their opinion, be necessary to erect a school-house capable of accommodating the children of the district. Immediately upon the receipt of said order, the trustee or trustees of such district shall call a special meeting of the inhabitants of said district, for the purpose of considering the question of building a school-house therein. Such meeting shall have power to determine the size of said school-house, the material to be used in its erection, and to vote a tax to build the same; but such meeting shall have no power to reduce the estimate made by the commissioner and supervisor aforesaid by more than twenty-five per cent of such estimate. And where no tax for building such house shall have been voted by such district, within thirty days from the time of holding the first meeting to consider the question, then it shall be the duty of the trustee or trustees of such district to contract for the building of a school-house capable of accommodating the children of the district, and to levy a tax to pay for the same, which tax shall not exceed the sum estimated as necessary by the commissioner and supervisor as aforesaid, and which shall not be less than such estimated sum, by more than twenty-five per cent thereof. But such estimated sum may be increased by a vote of the inhabitants at any school meeting subsequently called and held according to law.

5. To examine persons proposing to teach common schools within his district, and not possessing the Superintendent's certificate of qualification or a diploma of the State normal school, and to inquire into their moral fitness and capacity, and, if he find them qualified, to grant them certificates of qualification, in the forms which are or may be prescribed by the Superintendent.

6. To re-examine any teacher holding his or his predecessor's certificate, and, if he find him deficient in learning or ability, to annul the certificate.

7. To examine any charge affecting the moral character of any teacher within his district, first giving such teacher reasonable

notice of the charge, and an opportunity to defend himself therefrom; and, if he find the charge sustained, to annul the teacher's certificate, by whomsoever granted, and to declare him unfit to teach; and, if the teacher held a certificate of the Superintendent, or a diploma of the State normal school, to notify the Superintendent forthwith of such annulment and declaration.

8. And, generally, to use his utmost influence and most strenuous exertions, to promote sound education, elevate the character and qualifications of teachers, improve the means of instruction and advance the interests of the schools under his supervision.

Comments upon the first, third and fourth subdivisions of section thirteen will be found under title six, and the second article of title seven. The remaining sections may be considered separately.

2. To visit and examine all the schools and school districts committed to his charge, as often in each year as shall be practicable; to inquire into all matters relating to the management, the course of study and mode of instruction, and the text books and discipline of such schools, and the condition of the school-houses, out-buildings and appendages, and of the district generally; to examine the district libraries; to advise and counsel the trustees and other officers of the districts in relation to their duties, and particularly in respect to the construction, warming and ventilation of school-houses, and the improving and adorning of the school grounds connected therewith, and to recommend to the trustees and teachers the proper studies, discipline and management of the schools, and the course of instruction to be pursued.

The duties comprised in this subdivision may be stated under two heads:

- I. Visiting and examining the schools;
- II. Advising and counseling trustees and other school officers.

I. The number of commissioners in the State, excluding the cities, is one hundred and twelve. Each commissioner is required to visit all the schools in his district each year, as often as is practicable. The number of districts to be visited by any commissioner will, in a few cases, reach one hundred and fifty; perhaps, in most cases, will be less, and in some a little more, than one hundred. Allowing half a day to a visit, it will be found practicable to visit each school and school district in the State not less than three times a year. It would be found useful, where practicable, to assemble together two or three schools, and devote a whole day to their examination. A comparison of schools would excite emulation, and improve both scholars and teachers.

Having acquired a complete and familiar knowledge of the geography of his district, the commissioner should arrange a plan for visitation, as a judge does the terms of his courts, for a year or two years. It would be well to print his programme, and distribute it in every town and district, so that trustees and pupils and people may be prepared for his visits. The publishers of newspapers would be found ready to insert the programme of visitation in their



papers, as an item of news highly important to their subscribers and readers.

In addition to this general notice, the commissioner should give a particular notice to the trustees and teacher of every school, of the day when he will be present and examine the school. He should invite the trustees to inform the parents of pupils of his visit, and urge them to attend.

*Examination of the School.*—Preparatory to this, the commissioner should ascertain from the teacher the number of classes, the studies pursued by each, the routine of the school, the successive exercises of each class during each hour of the day, the play spells allowed, etc., and thus obtain a general knowledge of the school, which will be found greatly to facilitate his subsequent duties. Every commissioner is enjoined to call for and examine the list of scholars in the book which the statute requires the teacher to keep, in order that he may see whether the names are correctly and neatly entered. He should be particular in his examination of the record of attendance, and, in case it be not kept according to the plan prescribed in the directions accompanying the register, he should call the attention of the teacher to his omissions or neglect, and instruct him how to keep it correctly. Young teachers often find difficulty in following the plainest rules, and the commissioner will serve them and the people of the districts, by exacting from the teachers constant care as to the safety, neatness, and correctness with which they keep the school registers. The commissioner should not omit to inform them of their duty to keep the registers under lock and key, and, at the close of their schools, to make oath to their being correctly kept, and to deliver them, in good order, to the district clerk.

The commissioner will then hear each class recite the ordinary lesson of the day. It will then be examined on the subjects of study. Generally it will be better to allow the teacher to conduct the exercises and examinations, as the pupils will be less likely to be intimidated, and an opportunity will be given of judging of *his* qualifications.

To enable him to compare the school with itself at another time, and with other schools, and to comply with the regulations hereinafter contained respecting the annual reports, the commissioner should keep notes of his observations, and of the information he obtains on all the subjects on which he is required to report; and he should particularly note any peculiarities which seem to require notice in the mode of instruction, in the government and discipline of the school, and the appearance of the pupils in respect to their cleanliness of person and neatness of apparel.

## II. Advising and consulting with other officers of the district.

This duty is by the act especially enjoined upon commissioners. The law, in the broadest terms, requires them to advise and counsel the trustees and other school officers in relation to all their duties.

The performance of this duty will demand great care and circumspection. It should be constantly borne in mind that the office of an adviser and counselor is to ascertain facts and learn the true condition of things, and then to suggest and propose improvements and remedies. Interrogatories judiciously

aimed at abuses, errors, mistakes and omissions, will call attention to them as clearly as if they were condemned outright, and at the same time give no offense.

The advice and counsel needed will generally come under the heads of proper studies; the discipline and conduct of the school; the course of instruction; the elementary books; the erection of school-houses; and the ability of the district to maintain a school.

1. *The proper studies.*—These vary with the age and advancement of the scholars. The great object of the common schools is, unquestionably, to instruct the youth of the State in the ordinary branches of a good English education. To spell, to read and write, should be the first care. As soon as a child can write, spelling and writing should be one exercise. The meaning of the words spelled should also be explained to the scholar, as a great assistance to the memory. Correct spelling and a clear comprehension of the words are essential to good reading. A distinct articulation of every syllable is the most important requisition. A correct, and not too forcible accent, an utterance neither too rapid nor too slow, and a clear understanding of the subject, are also important requirements.

The commissioner will carefully note the capabilities of the scholars, and their grade of improvement, and advise that no studies be imposed or permitted until the pupil can enter upon them understandingly. The hill of science must be climbed with patient assiduity, step by step. Some may be able to step faster than others; but whoever attempts to overleap any of its acclivities will be sure to fall back and be compelled to start anew.

2. *The discipline and conduct of the school.*—The commissioners cannot too strongly inculcate the necessity of a punctual and continuous attendance during school hours for the whole term. Teachers should be advised to insist upon this. The first hour of a session, in the morning or afternoon, should not be interrupted by the noisy dropping in, every few minutes, of truant and tardy children. The interruption is not the worst of the evil. The want of punctuality involves the loss of time that should be applied to study; and the tardy and often absent soon lag behind their associates, become disheartened, relax their efforts, and finally, in many cases, acquire a habit of irregularity, insubordination and negligence, which marks their character through life.

Order and system should prevail in the whole conduct of the school. The routine of recitations and other exercises should be regular and seldom changed. The pupils should give a ready obedience to the commands of the teacher, and a strict compliance with rules and regulations should be exacted. Pupils should be instructed that these commands, rules and regulations are not imposed upon them as a restraint or humiliation, but for their good, as the best means of expediting the sole business of the school, their acquisition of knowledge.

The commissioners should also observe whether the teachers possess the respect of their scholars, and whether their deportment in and out of the school is such as to preserve it. They should particularly note how the authority of the teacher is maintained; whether it is the result of a mild and conciliating, but

firm and steady government, or whether it is an unwilling submission to the arbitrary rule of a high temper and the fear of the rod.

3. *The course of instruction.*—The order of studies which long experience has decided to be best, and which is generally followed, is, the alphabet, spelling, reading, arithmetic, geography, history and grammar. To learn the names of things is among the earliest efforts of the infant mind. It is the work of several years to master the simplest combinations of language. In teaching the elements of knowledge, therefore, great discretion and discrimination are necessary in graduating instruction to the capacity of pupils. Primary books should contain only familiar household words and the commonest forms of speech. When these have been mastered, others of a higher grade should be substituted; and the pupil should be all the time, insensibly but constantly, climbing an ascending grade.

The four simple rules of arithmetic are easily taught; not by arbitrary rules and a few examples, but by continual practice and repetition, with blocks or balls, by which the numbers are represented to the eye. The little boy who sells newspapers, or peddles peanuts and apples, will learn in a few weeks all the combinations of simple numbers, less than one hundred, without having ever heard of Colburn or Emerson. Make a purchase of him, and hand him a quarter of a dollar, and he will make his computation and give you the change as promptly as the readiest bank teller.

Geography, by means of maps, charts and globes, may be taught at a very early age. History requires a more advanced age. The study of history and geography may be combined. In the course of the reading lessons, and during the lesson in history, whenever a place is named the pupil should be required to point it out on the map. A daily newspaper may be of essential service in teaching geography and current history. The use of a map, with a daily paper, will very soon make the pupils acquainted with all the principal commercial ports and political divisions of every part of the world. Geography and history, thus learned, would be indelibly impressed upon the memory. Biography, however, has a charm for the very young, and many brief narratives might be made a part of the school exercises. Grammar, treating of the structure and composition of language, is a difficult study, and should not be undertaken till the mind of the pupil has attained a maturity and strength capable of comparing, analyzing and combining phrases and sentences. To read, to speak and to write, correctly and elegantly, may all be learned without consulting a grammar. But a knowledge of English grammar is a very important part of a good common education, and its study a very useful exercise of the intellectual powers.

4. *Books of elementary instruction.*—Within the last few years a great improvement has been made in elementary books. A great many series of books, elucidating and illustrating every branch of education in our common schools, have been published. None of them are so defective as to require exclusion from the schools, and none of them are comparatively so superior to others as to merit particular recommendation. Trustees should be advised not to permit every new teacher to introduce a new set of books. A teacher is very poorly quali-

fied who cannot use one set of text books as well as another. The trustees should exercise their authority, in relation to text books, to prevent any unnecessary change, and to preserve an uniformity. Classes of the same grade should have the same books.

Whenever the commissioner finds in any school a number of pupils of the same standing using different books, and classed separately, he should point out the evil, by showing how, if all had the same books, one class and one recitation would suffice for all, and the teacher's corrections and observations, repeated to several classes, might be limited to one, and much valuable time of pupils and teacher be saved.

Where the evil of a variety of text books prevails, it might not be advisable to compel uniformity by an immediate change of books. The trustees could however decide upon the text books to be used, and require every scholar who should afterward have occasion to purchase a new book to conform to their decision.

In cities and large villages, the adoption of uniform text books is a pecuniary advantage to the people, particularly to the transient population that frequently move from one district to another, and are generally least able to purchase new books. But the positive necessity of uniformity is not so apparent in rural districts. The inhabitants there do not often change their residence. It is not best to be indifferent as to the merit of text books, but to exercise prudence in recommending them. It is desirable that the people should understand that while the interests of their children command the first attention, the subject of expenses has also a fair consideration. Their confidence and co-operation will thus be secured.

5. *School-houses and grounds.*—It is highly important that an earnest appeal be made to the trustees and inhabitants of the several school districts to give attention to the condition and improvement of school-houses and grounds. It is not possible to have schools high toned and in healthy spirit where inattention to comfort and beauty exists. If any element of character unfavorable to order and progress is called into morbid activity, it may often be traced to this source.

Health of body and vigor of mind should be carefully regarded. There should never be too long confinement in school rooms. Pure air is absolutely indispensable. It has been suggested, by distinguished writers on education, that six hours of daily confinement will impair the health of the great majority of pupils; that, with the very best ventilation, no school room containing a score or more of children can be as healthy as the open air; hence, that no pupil should be kept in school for a longer time than is necessary to fix his attention upon his lessons. Growth and development of body are indispensable to the future well-being of the child and to realize the ideal of a well constituted man or woman. To this end the enjoyment of pure, fresh air, unconstrained attitudes of body, ample exercise and exhilarating play, are absolutely necessary; and the school-house, its location and grounds, should supply these wants. The mind of every child craves, receives and assimilates knowledge. We should so adapt our educational facilities that the desire for

intellectual acquirement shall remain through life unimpaired. But very many children are so stupefied by the noxious air which they are compelled to breathe six hours every day, their vital apparatus so wearied, that they acquire an abhorrence of school and a disgust for study which are never eradicated. It is in the nature of things that any exertion, connected with physical suffering or oppressive sense of constraint, induces repugnance. Hence, in spite of the efforts employed to impress such children with an earnest conviction of the importance of a good education, they regard the school room as a prison, the vacations as seasons of delight, and adult age as the era of emancipation from an arduous bondage.

It is the vocation of the commissioners to discover and suggest a correction for these evils. When they visit school-houses, they should notice whether they are properly located. Many are situated on the line of the highway. They should be removed from it sufficiently far to escape the noise, dust and other inconveniences. If they are old, and a few boards and shingles and a little paint will improve their external appearance, and make them internally more safe and comfortable, surely they should be applied. If the doors are broken or the seats and desks marred, they should be repaired and adapted to the physical comfort of the pupils; if the grounds need grading, it should be done; if pools of stagnant water are near, they should be drained and filled; if proper fencing is required, let the subject receive prompt attention. Trees should be planted, shrubs and flowers should be set. Let free application be made of broom, brush and lime, to renovate the internal economy of the school room. Willing hands enough can be found in every school district to make all the improvements suggested, provided attention is directed to their importance. Certainly it is the school-house, if any building, which ought to be constructed and preserved with care and surrounded with pleasant scenery. Few parents would reside in a dwelling constructed with as little regard to beauty and comfort as are many of our school-houses. They should care as well for the place where their children congregate for instruction. They should be impressed with the conviction, that there the associations of nature and art should be attractive, to secure on the part of scholars a love for their school; that associations with order and beauty give birth, in the minds of the young, to pure and holy emotions, whose happy influence will establish them in purity of desire and thought.

The attention of trustees should be called to this subject; and, if possible, they should be induced to appoint a suitable day for making necessary improvements and embellishments. Let the matrons and maids assist. Let the children participate in the work; they should share the pleasure and receive the lesson it would teach.

5. To examine persons proposing to teach common schools within his district, and not possessing the Superintendent's certificate of qualification or a diploma of the State normal school, and to inquire into their moral fitness and capacity, and, if he find them qualified, to grant them certificates of qualification, in the forms which are or may be prescribed by the Superintendent.

The commissioners, being the only persons in their several districts authorized to grant certificates, should be prepared to make examinations whenever making their round of visitations. To afford every reasonable accommodation to persons who may offer themselves, they should appoint some particular day and place, in each town, where they will be in readiness to examine teachers. It would also be well to give notice in the county papers in the spring and fall, just before the summer and winter terms generally commence, of certain times and places at which applications may be made to them for licenses. Such notices would probably bring together several applicants, and thereby lessen the labor and time required for examination. One or more hours of each day might be set apart for this purpose, at the time of holding a teachers' institute.

The examination should be confined to ascertaining the qualifications of candidates, under three heads, viz. : in respect, *first*, to moral character ; *second*, learning ; *third*, ability.

*First.* The testimonials as to moral character should be full and explicit, and should be from persons long and intimately acquainted with the applicant. This is no unimportant matter ; and this department establishes it as a positive regulation, that no certificate is to be granted without entire satisfaction on this point. The training of youth must not be committed to persons of bad manners and questionable morals. Children will necessarily be more or less influenced by the example of their teachers, whose principles, therefore, should be such as to inspire confidence, and whose behavior worthy of imitation.

The commissioner will be careful not to push his inquiries beyond the field of morals, and extend them into the debatable ground of opinion, religious or political. All he can ask is that the applicant shall hold a fair reputation, free from the reproach of crime, or any taint of immorality. He would be justified in rejecting a noisy zealot, with manners rude, obtrusive and offensive, indicating uncurbed passions and unsound principles, liable to render him obnoxious to the inhabitants and unfit for a teacher of youth. The use of intoxicating liquors would be a serious objection to the character of a teacher. Temperance and sobriety should be demanded of every applicant. The objection is to the drinking of spirituous liquors, and not to drunkenness only. Persons under the influence of intoxicating drinks seldom act calmly and deliberately, but are liable to outbreaks of passion, moments of petulance, seasons of unnatural excitement or depression, entirely unfitting them for the government of a school or the management of young people.

The man who puts the inebriating cup to the lips of a child is instinctively execrated, and no voice is ever raised to justify the inhuman act. However besotted and degraded a man may be, he would be glad to have his children grow up pure, temperate and respected. In all nations, and all ages, the corrupters of youth have been stigmatized as the worst enemies of society and of the State. A rule, therefore, which excludes from the office of teacher the habitual drinker of intoxicating liquors, harmonizes with the better feelings of the inebriate himself, as well as with the general sense of mankind.

*Second.* As to the learning of applicants.

The improvement in text books, the use of charts and philosophical apparatus, and the general diffusion of knowledge, have raised the standard of qualification for teachers within the last ten years. Notwithstanding the faults and defects of our school system, there is abundant proof that it has produced fruit an hundred fold, and that our common schools, throughout the State, are now the best schools, and have almost entirely superseded private instruction. While, therefore, teachers must bear an examination on the same subjects as formerly, a much more minute, accurate and extensive knowledge of them is required.

In spelling, reading and penmanship, they are expected to be proficient, and they should also be well versed :

1. In the definition of words ;
2. In arithmetic, mental and written ;
3. In geography ;
4. In the use of charts, globes and school apparatus ;
5. In the principles of English grammar ; and,
6. In the history of the United States, England, and of Europe generally, and in universal history ;
7. In the science of government, at least they should know the character and operation of our own State and national governments.

In a large majority of the schools, a limited acquaintance with the last two heads is admissible, if the applicant is familiar with the other branches.

It may be advisable, also, if the power is exercised with due discretion, to grant certificates permitting the holder to teach a particular school, or to occupy the post of an assistant in departmental schools. The same extent and degree of knowledge is not needed to fill a subordinate place, and hear recitations in primary classes, as to take charge of a large school. Many summer schools may also be profitably intrusted to young girls, not qualified by age, education or experience to take charge of large schools.

In some schools, especially in high and union free schools, the range of examination might include the higher branches of mathematics, physiology and mental philosophy.

In all cases a familiarity with the current history of the present time, gathered from newspapers, should be required.

*Third.* Ability to teach. This implies something more than good character and mere learning. A faculty of imparting knowledge is essential to success as a teacher. The management of a school requires a certain tact in dealing with children ; a patience and good nature not possessed by every one, and by very few in the same degree. The commissioners, by general inquiries and by pertinent questions to the applicant, on personal examination, may form a very fair judgment of his qualifications in these respects. Subsequently, their observations on visiting the schools will enable them to correct their judgment. Certificates, in the first instance, should be granted for a term not exceeding a year. A second one should not be given to a person whose ill nature, or petulance, or want of tact, or incapacity to impart instruction, disqualifies him for the proper government of a school.

Having satisfied themselves of the qualifications of the applicant, the commissioners will grant certificates, in the following forms.

*Certificate of the First Grade.*

TO ALL TO WHOM THESE PRESENTS SHALL COME: BE IT KNOWN, that I, \_\_\_\_\_, school commissioner for the \_\_\_\_\_ district, in the county of \_\_\_\_\_, having examined A. B., and having ascertained his qualifications in respect to moral character, learning and ability to instruct a common school, DO HEREBY CERTIFY that he is duly qualified, and that his experience in and devotion to the profession entitle him to the rank of a teacher of the FIRST GRADE, and he is accordingly hereby LICENSED to teach any common school in this district for three years from this date.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand eight hundred and \_\_\_\_\_.

C. D.

*Certificate of the Second Grade.*

TO ALL TO WHOM THESE PRESENTS SHALL COME: BE IT KNOWN, that I, \_\_\_\_\_, school commissioner for the \_\_\_\_\_ district, in the county of \_\_\_\_\_, having examined \_\_\_\_\_, and having ascertained his qualifications in respect to moral character, learning and ability to instruct a common school, DO HEREBY CERTIFY, that he is qualified and entitled to the rank of a teacher of the SECOND GRADE, and he is accordingly LICENSED to teach common schools in any town in this district for the term of one year from this date.

Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand eight hundred and \_\_\_\_\_.

C. D.

*Third Grade—Limited Forms.*

TO ALL TO WHOM THESE PRESENTS SHALL COME: BE IT KNOWN, that I, \_\_\_\_\_, school commissioner for the \_\_\_\_\_ district, in the county of \_\_\_\_\_, having examined A. B., and having ascertained his qualifications in respect to moral character, learning and ability to instruct a common school, DO HEREBY CERTIFY that he is entitled to the rank of a teacher of the THIRD GRADE, and is qualified to teach the school in District No. \_\_\_\_\_, in the town of \_\_\_\_\_, in this district, and not elsewhere, and he is accordingly hereby LICENSED to teach the said school for the term of one year from this date.

Given under my hand, etc.

C. D.

*Another*

TO ALL TO WHOM THESE PRESENTS SHALL COME: BE IT KNOWN, that I, \_\_\_\_\_, school commissioner for the \_\_\_\_\_ district, in the county of \_\_\_\_\_, having examined \_\_\_\_\_, and having ascertained \_\_\_\_\_ qualifications in respect to moral character, learning and ability to instruct a common school, DO HEREBY CERTIFY that he is entitled to the rank of a teacher of the THIRD



GRADE, and is qualified for the place of first (or second) assistant in the school in the                    district, in the town of                   , and is accordingly hereby LICENSED to teach in said school in that capacity for one year from this date.

Given under my hand, etc.

C. D.

*Another.*

TO ALL TO WHOM THESE PRESENTS SHALL COME: BE IT KNOWN, that I,                   , school commissioner for the                    district, in the county of                   , having examined A. B., and having ascertained his qualifications in respect to moral character, learning and ability to instruct a common school, DO HEREBY CERTIFY that he is entitled to the rank of a teacher of the THIRD GRADE, and is qualified to be a teacher in the primary department in the public schools in this district (or city), and he is accordingly hereby LICENSED to teach in that capacity for one year from this date.

Given under my hand, etc.

C. D.

Certificates of the FIRST GRADE are intended for those who have had experience in their profession, who are endowed by nature with a peculiar tact or who have acquired a superior skill, in the management of youth and the government of schools, and should be granted to those only who can bear an examination in the whole range of studies taught in common schools. Every qualification heretofore and hereafter indicated as necessary or valuable in a teacher should be possessed by the applicant.

Candidates for the SECOND GRADE should be familiar with the rules of elocution and pronunciation, and be able to read with ease, intelligence and expression; they should write a bold, plain hand, and be able to teach some good system of writing; they should be fully versed in mental and commercial arithmetic, and well fitted to teach fractions, and the involution and evolution of roots; they should be able to teach bookkeeping by single entry; they should know the common rules of orthography, and be able to parse any sentence in prose or poetry submitted to them, and to write grammatically, with correct spelling and punctuation, the substance of any passage which may be read to them; and be entirely familiar with the elements of physical, civil and political geography, as contained in any common school geography.

In short, the second grade certificates are intended for those who, with less experience and a more limited acquaintance with some of the higher branches, have, nevertheless, proved themselves able to impart to others what they have themselves acquired, and who have attained the skill necessary to govern a school, but who, on account of their youth or their want of opportunity, are fully prepared to teach only the ordinary studies considered essential in the common schools.

Candidates for the THIRD GRADE certificates should be required to spell correctly the words of any ordinary sentence dictated by the commissioner; to read distinctly and intelligently any passage from any ordinary reading book; to work readily questions in common arithmetic; to understand the elements of English grammar, and to parse any easy sentence in prose; to have a knowl-

edge of the elements of geography, and the general outlines of the globe; to write a plain, open hand, and to exhibit good taste in the arrangement of words and paragraphs; to write letters intelligibly and grammatically, and to fold and superscribe them properly; and to know so much of morals and discipline as to appreciate the importance of self-government.

The third grade certificates are intended for temporary licenses, to be granted to novitiates and persons who for lack of experience or ability have need to acquire the knowledge and skill necessary for higher positions.

But the best set of rules and regulations respecting the examination of candidates must, after all, be regarded only as a partial help to the commissioner. The wisdom and justice of his conclusions will depend mainly upon his own judgment. Whatever gift, or acquirement, or habit of thought and action may constitute his ideal of the true teacher, the applicants will nearly all come short of it. He can only look hopefully for an approximation, and grant his certificates to those who approach nearest to his ideal.

In pursuance of the discretion vested in the State Superintendent of Public Instruction, it is established as a regulation that no certificate shall be granted by any commissioner for a longer period than three years. Experience has proved the impossibility of finding one hundred and twelve school commissioners, some one of whom will not injure his reputation as a wise and considerate public officer by granting to his favorites or friends these certificates for the long term without regard to the high qualifications named. I wish to place here a strong expression of my disapproval of such a course of action on the part of any commissioner. Official preferences are not to be given for the benefit of any officer or on account of the favor of any one, but solely for the public welfare, and to say that a school officer who, when his term is about to expire, grants certificates to which teachers are not entitled, thus embarrassing the action of his successor in office, is unworthy of public confidence, is expressing the wrong in mild terms.

6. To re-examine any teacher holding his or his predecessor's certificate, and, if he find him deficient in learning or ability, to annul the certificate.

A commissioner may judge of the learning of a person by questions relating to the studies to be taught in the district school. A searching examination would expose ignorance and reveal deficiencies. But ability to teach may not be combined with learning, and upon this point the commissioner must make his observations in school, or obtain his information from others. A person may be unfit to teach from want of self-control. The first qualification of a good teacher is the ability to rule his own passions, and keep them under subjection. If complaints are made against any teacher of exhibitions of bad temper, of yielding to ungovernable passions, of cruelty in the infliction of punishment, the commissioner should investigate the charges, and give the teacher an opportunity to refute or explain them. If they are sustained by sufficient proof, he should annul the certificate.

Another deficiency may be in the ability to manage and govern a school. Without good government, which secures obedience, keeps good order, and commands respect, learning is of little avail, for disobedience leads to disorder, and in the midst of confusion there can be no application to study. In a young teacher something may be forgiven on this score, for ability may be gained by experience. But teachers who, after years of experience, fail in government, should give up the profession.

7. To examine any charge affecting the moral character of any teacher within his district, first giving such teacher reasonable notice of the charge, and an opportunity to defend himself therefrom; and if he find the charge sustained, to annul the teacher's certificate, by whomsoever granted, and to declare him unfit to teach; and, if the teacher held a certificate of the Superintendent, or a diploma of the State normal school, to notify the Superintendent forthwith of such annulment and declaration.

When complaint is made of deficiency in moral character, full opportunity should be given the teacher for defense. He should be made acquainted with the precise charges affecting his character, and ample time allowed to prepare proofs and bring witnesses to explain or disprove them.

The refusal of any person to submit to an examination to ascertain his qualifications as to learning and ability, or a failure to appear and answer charges touching his moral character, after due notice of the time and place for a hearing, would be an admission of incompetency or immorality, as the case might be, sufficient to justify the annulling of his certificate.

The mode of procedure is not prescribed by the statute in express terms. It will, therefore, be safer to consider section 37, of chapter 480, Laws of 1847, as still in force, and as controlling the *manner* in which the school commissioner is to exercise this power.

The section is as follows :

"§ 37. The town superintendent may annul any such certificate given by him, or his predecessors in office, when he shall think proper, giving at least ten days' previous notice, in writing, to the teacher holding it, and to the trustees of the district in which he may be employed, of his intention to annul the same."

In 10th Barbour's Reports, 296, it was held by the supreme court that ten days' notice, and an order at the expiration of that time, were necessary to annul the certificate of a teacher. In that case, the superintendent examined a teacher on the last day of January, and, as he testified, decided him to be incompetent to teach, on account of his education being in some respects insufficient, and annulled his certificate. On the second of February, he gave notice to the teacher that he intended to annul his certificate, and filed a similar notice with the town clerk, "to take effect February 12th." The court say

that the order annulling the certificate must be in writing, and, commenting on the evidence of the superintendent, remark: "He doubtless formed the mental conclusion that he would annul the certificate, and gave notice to that effect. This was not a compliance with the provisions of the law. A notice of an intention to do an act is not an actual performance. The object of the statute in requiring notice was to fulfill the great requirement of justice, that no man shall be condemned unheard. The parties were entitled to a day before the superintendent, of which they were to have ten days' notice. To the teacher it was a matter of deep concern that he should have an opportunity of resisting a sentence of degradation, affecting his character and his prospects of usefulness in life. It does not appear that the superintendent made any order at the expiration of the ten days mentioned in the notice. The contrary is conclusively to be inferred from the fact that he left the State on the seventh of February, and did not return until three weeks afterward. It follows, therefore, that the certificate of the teacher was not legally annulled on the third of February, nor indeed on any day in that month."

It is undoubtedly the right of the commissioner to examine a teacher in respect to his literary qualifications, and to satisfy himself, by inspection of his method of conducting school exercises, as to his intellectual and moral capacity to teach, without previous notice. A very unfavorable impression might often be formed, and that justly, which the teacher could remove by showing facts not apparent upon the examination.

The notice may be in the following form, and should be served personally upon the teacher and upon one or more of the trustees in whose employment he may be:

Take notice that it is my intention to annul the certificate of R. S., a teacher employed in district No. \_\_\_\_\_, of the town of \_\_\_\_\_ for want of sufficient literary qualifications (or ability to teach, or whatever the cause may be), unless cause to the contrary shall be shown on or before the \_\_\_\_\_ day of \_\_\_\_\_

A. B.,  
*School Commissioner.*

At the expiration of the notice, if the commissioner determine to annul the certificate, he should make an order substantially as follows:

Notice having been given by me in writing, at least ten days previous to the \_\_\_\_\_ day of \_\_\_\_\_, to R. S., a teacher employed in district No. \_\_\_\_\_, in the town of \_\_\_\_\_, and also to the trustees of such district, of my intention to annul the certificate of such teacher for want of sufficient literary qualification (or ability to teach, or as the case may be), unless cause to the contrary were shown on or before the day aforesaid, and no cause having been shown (or if the parties have appeared to show cause, after hearing the proofs and allegations of the said R. S. [or the trustees], and mature deliberation being thereupon had), it is hereby ordered that the certificate of qualification of the

said R. S., as a teacher of common schools, be, for the cause aforesaid, and the same is hereby annulled. Dated this            day of            .

A. B.,

*School Commissioner for            , etc.*

If charges affecting the moral character of the teacher be presented, the notice should be :

Take notice that the following charges, affecting the moral character of R. S., a teacher employed in district No.            , of the town of            , have been presented by James Jackson, of the town of            , as a cause for annulling the certificate of said teacher, viz.: (Here recite the charges, in which the precise nature, time, place and circumstances of the offenses imputed to the teacher should be stated); and that I shall proceed to examine into the charges aforesaid, and to hear the defense of the said teacher at            o'clock of the day of            , at            , in the town of            .

C. O.,

*School Commissioner for            , etc.*

It is believed that a commissioner ought not to subject a teacher to the notoriety of a public accusation, unless some person shall make complaint to him, and sustain it by his own oath or that of witnesses whom he produces. He should ascertain that there is probable cause for proceeding in substantially the same manner as a justice of the peace, to whom application is made for a criminal warrant. He may, for this purpose, administer oaths, examine the complainant and his witnesses orally, and reduce their testimony to writing.

The charges must be direct and positive of such offenses as would justify the annulling of the certificate. They ought to be sufficiently particular to apprise the teacher of what he is accused, and enable him to prepare for defense; for example, if an immoral habit, as profane swearing, licentiousness, intemperance in the use of spirituous liquors, is charged, one or more instances of it should be specified.

When the time for examination arrives, it is for the complainant first to adduce evidence in support of his charges. The accused is not bound to offer any testimony until something is proved against him by witnesses whom he has the opportunity to cross-examine. The preliminary complaint is only for the purpose of putting him upon trial, but is not evidence upon the trial, unless for the purpose of discrediting the witnesses, by showing that they have testified differently as to the same transaction.

As the commissioner is required to report his action to the State Superintendent, and as an appeal may be taken from his decision, he should take full minutes, as it is given, as nearly as possible in the language of the witnesses. It would be well, also, though not indispensable, that the testimony of each witness should be read over to and subscribed by him as soon as he has concluded.

The statute contemplates a decision by the commissioner, and the testimony may be needed only in case an appeal is brought from the decision.

The commissioner should draw three copies of his instrument annulling a certificate, one of which he should keep, and another serve upon the teacher, and the third send to the State Superintendent. The trustees, also, should be notified of the fact immediately, in order to save the district from the loss of the public money consequent upon the employment of a teacher without a license.

The commissioners are instructed to report, once in three months, to this department, the names of all teachers whose certificates have been annulled, with the cause of such proceeding.

They should also keep a register of the names of all persons to whom they grant certificates of qualification, with the date of each certificate and the term and place for which it was given; and also the names of all persons whose certificates are annulled by them, with the date, and the general reasons therefor.

§ 14. Every school commissioner shall have power to take affidavits and administer oaths in all matters pertaining to common schools, but without charge or fee; and, under the direction of the Superintendent of Public Instruction, to take and report to him the testimony in any case of appeal.

It was not the design of this section to supersede the present mode established by regulation of presenting testimony upon appeals in the form of written affidavits, but to enable the Superintendent to obtain additional light, where the written evidence is conflicting, ambiguous or otherwise unsatisfactory, by the oral examination of witnesses before a commissioner. Where the Superintendent conceives this necessary or desirable, an order will be made in the case, referring it to the proper commissioner to hear and report all testimony which may be produced before him by the respective parties to the appeal, or the testimony of particular witnesses named in the order, or testimony in relation to particular issues specified. The range of inquiry will be limited by the terms of the order.

Upon receiving the order, the commissioner will give notice to both parties of the time and place at which he will hear the evidence to be produced by them respectively, if the reference is general, or of the witness named, or in relation to particular issues or subjects of inquiry, if the reference is limited in either respect. At the time and place appointed, the commissioner will administer an oath to the witnesses in the following form:

You swear (or declare and affirm) that the evidence you shall give upon this hearing, under the order of the Superintendent of Public Instruction, on the appeal of \_\_\_\_\_ (reciting the title of the proceeding as the same is given in the entitling of the order), shall be the truth, the whole truth, and nothing but the truth, so help you God.

The evidence of each witness on his direct examination should be reduced to writing, read over to the witness, any additions or corrections he desires to make stated (without erasing any thing that has been written), and then subscribed by the witness and certified by the commissioner, before the witness is cross-examined. The cross-examination is to be taken, corrected, subscribed and certified in the same manner.

At the conclusion of the examination the commissioner should indorse or under-write upon the original order "The execution of this order appears by the depositions hereto annexed. A. B., Commissioner." He should then append to the order, and return therewith to the Superintendent, the depositions in the following form :

[Title of the case as in the order.]]	}	Depositions taken on the      day of      , at      , under an order of the Superintendent of Public Instruc- tion, dated      , before A. B., school commissioner for the      commis- sioner district of      county.
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C. D., a witness produced, was duly sworn by said commissioner, and on being orally examined by      for the appellant (or respondent), deposeeth as follows: I reside in the town of      ; I was present at a meeting held in District No.      , on the 10th day of May, 1856, etc.

On hearing the above read, the witness further deposeeth: I want to be understood that I was not present at the meeting (give the additions and corrections of the witness to his testimony as reported.

(Signed.)

C. D.

Subscribed and sworn to this      }  
day of      , before me,      }  
A. B., Commissioner.

On being cross-examined by      for the respondent, the witness above named deposeeth: I saw James Jones at the meeting to which I have testified. He was outside of the building when the meeting was organized, etc.

The commissioner has no power to compel the attendance of witnesses. If any of those named in the order do not appear, he should take and report the evidence of the parties, showing their refusal or other reason for non-attendance.

§ 15. The commissioners shall be subject to such rules and regulations as the Superintendent of Public Instruction shall, from time to time, prescribe; and appeals from their acts and decisions may be made to him, as hereinafter provided. They shall, whenever thereto required by the Superintendent, report to him, as to any particular matter or act, and shall severally make to him annually, up to the first day of October in each year, a report in such form, and containing all such particulars as he shall prescribe

and call for; and for that purpose shall procure the reports of the trustees of the school districts from the town clerks' offices, and after abstracting the necessary contents thereof, shall arrange and indorse them properly, and deposit them with a copy of his own abstract thereof, in the office of the county clerk; and the clerk shall safely keep them.

The annual reports of the trustees of school districts are required to be made between the first and second Tuesdays of October in each year, and filed with the town clerks. (Sec. 60 of title 7.) The commissioner should call for them promptly; and, if any districts are delinquent, should at once proceed to ascertain the cause. It should be his care, if possible, to cause a report to be made by every district in his jurisdiction, and he should aid trustees who may need his counsel and advice.

The reports of the commissioners are required to be made at such times and to contain such statistical information as the State Superintendent shall prescribe. Blank forms will be annually prepared and distributed to the commissioners, and circulars will be addressed to them, with instructions as to the information required and the time when the reports must be completed, and deposited in the mail or sent by express to this department.

It must be borne in mind that the State Superintendent is directed to send in his annual report to the Legislature, dated December 31st of each year. The reports of commissioners must, therefore, be prepared two or three months previous to this time; negligence on the part of one, two or three commissioners will necessarily cause serious delay and embarrassment to the department, as the Superintendent cannot comment upon results until all the details are received.

### TITLE III.

OF THE STATE AND OTHER SCHOOL MONEYS, THEIR APPORTIONMENT AND DISTRIBUTION, AND, HEREIN, OF TRUSTS AND GIFTS FOR THE BENEFIT OF COMMON SCHOOLS.

#### FIRST ARTICLE.

*Of the State school moneys and their apportionment by the Superintendent of Public Instruction, and payment to the county and city treasurers.*

§ 1. There shall be raised by tax, in the present and each succeeding year, upon the real and personal estate of each county within the State, one mill and one-fourth of a mill upon each and every dollar of the equalized valuation of such estate, for the support of common schools in the State; and the proceeds of such tax shall be apportioned and distributed as herein provided.



The law of 1814 required the boards of supervisors to levy upon each town in the county a tax equal in amount to the money apportioned to it from the school fund. The first State tax was levied by authority of chapter 151, Session Laws of 1851, page 292. The fixed sum was \$800,000. By section 1, chapter 180, of 1856, the Legislature ordered a tax of three-fourths of a mill on every dollar of valuation. This provision graduated the tax so that increasing wealth would yield a larger tax to meet the wants of a growing population. Chapter 405, of 1867, has added half a mill to the rate, with the intention of making the revenues of the school fund and United States deposit fund, together with the tax, support the common schools for at least twenty-eight weeks in most of the districts.

§ 2. No clerk of any board of supervisors, or other person who shall make out the tax list or assessment roll of any town, shall omit to include and apportion among the moneys to be raised thereby the amount hereby required to be raised for the support of schools, by reason of the omission of the board of supervisors to pass a resolution for that purpose.

§ 3. The moneys so raised shall be paid into the State treasury, and the Treasurer may transfer them from one depository to another by his draft, countersigned and entered by the Superintendent of Public Instruction. No such money shall be paid out of the treasury except upon such warrant of the Superintendent, countersigned by the Comptroller, referring to the law under which it is drawn. The Superintendent shall countersign and enter all checks drawn by the Treasurer in payment of his warrants, and all receipts of the Treasurer for such money paid to the Treasurer, and no such receipt shall be evidence of payment unless it be so countersigned.

§ 4. The Comptroller may withhold the payment of any moneys to which any county may be entitled, from the appropriation of the incomes of the school fund and the United States deposit fund for the support of common schools, until satisfactory evidence shall be furnished to him that all moneys required by law to be raised by taxation upon such county, for the support of schools throughout the State, have been collected and paid or accounted for to the State Treasurer; and whenever, after the first day of March, in any year, in consequence of the failure of any county to pay such moneys on or before that day, there shall be a deficiency of moneys in the treasury applicable to the payment of school moneys to which any other county may be entitled, the

Treasurer and Superintendent of Public Instruction are hereby authorized to make a temporary loan of the amount so deficient, and such loan, and the interest thereon at the rate of twelve per cent per annum, until payment shall be made to the treasury, shall be a charge upon the county in default, and shall be added to the amount of State tax, and levied upon such county by the board of supervisors thereof, at the next ensuing assessment, and shall be paid into the treasury in the same manner as other taxes.

The object of the Legislature in the preceding provision was to prevent the moneys raised for school purposes in the several counties from being withheld from the State treasury, and being temporarily employed to supply the deficiencies in the county treasuries arising from delay in the collection of taxes imposed for county purposes. It is therefore required that the county's proportion of the school tax should have been actually *collected*, and either paid into the State treasury or accounted for—as it might be by receipts from the supervisors of their respective towns, showing the payment to them, on account of the apportionment to their towns made by the State Superintendent and the school commissioners, of an amount equal in the aggregate to the school tax due from the county—before the county treasurer is authorized to require from the Comptroller a warrant for the amount apportioned to his county from the incomes of the school fund and United States deposit fund.

It also subjects the county to the payment of interest upon so much of its school tax as is withheld from the State treasury, whenever it becomes necessary to make a loan to furnish the State treasury with the funds for the payment of school moneys to any other county which is not in default, and is therefore entitled to immediate payment.

It is obviously, therefore, the duty of the county treasurer, for the purpose of protecting his county from the liability to the payment of interest on a loan to be made on its account, to regard the first moneys which come to his hands from the town collectors as belonging exclusively to the school fund. Other claims may be postponed without incurring a charge for interest, while this cannot. The power and duty of the Treasurer and State Superintendent to make loans under this section is not suspended, when, as is often the case, the Legislature extends the time for the collection of taxes; and it would be most unjust that the schools should suffer in those counties which have collected their taxes promptly, for want of the exercise of that power, at the expense of the counties where their collection is delayed, either by an extension of the time for collection or by the return of non-resident lands. In the latter case, the county treasurer can obtain the money or a credit thereof from the Comptroller, for all the arrears of taxes admitted by him, and should not therefore subject the school tax to any deduction or reservation on account of returned lands.

§ 5. The moneys raised by the State tax or borrowed as aforesaid to supply a deficiency thereof, and such portion of the income

of the United States deposit fund as shall be appropriated, and the income of the common school fund, when the same are appropriated to the support of common schools, constitute the State school moneys, and shall be divided and apportioned by the Superintendent of Public Instruction, on or before the twentieth day of January in each year, as follows; and all moneys so apportioned, except the library moneys, shall be applied exclusively to the payment of teachers' wages:

By chapter 237, Laws of 1838, the sum of \$110,000, for teachers' wages, and \$55,000, for district libraries, were appropriated from the income of the United States deposit fund, to be distributed "in like manner and upon like conditions as the school moneys are now or shall be hereafter distributed."

The moneys raised by the State tax, and the revenue of the common school fund, and that of the United States deposit fund appropriated to the support of common schools, constitute the "State school moneys."

§ 6. He shall apportion and set apart, from the income of the United States deposit fund so appropriated, the amounts required to pay the annual salaries of the school commissioners elected or elective under this act, to be drawn out of the treasury and paid to the several commissioners as hereinbefore provided; and he shall also apportion to each of the cities of the State, which under a special act employs a superintendent of common schools or a clerk of the board of education who does the duty of supervision, out of the income of the said fund, or out of the income of the common school fund so appropriated, five hundred dollars for each member of Assembly to which such city shall be entitled according to the unit of representation adopted by the Legislature, to be paid into the city treasury and expended according to law, for the support of the common schools of the city. He shall then set apart, from the income of the United States deposit fund, for and as library moneys, such sum as the Legislature shall appropriate for that purpose. He shall also set apart from the free school fund a sum not exceeding two thousand dollars for a contingent fund. He shall then set apart and apportion, for and on account of the Indian schools under his supervision, a sum which will be equitably equivalent to their proportion of the State school moneys upon the basis of distribution established by this act, such sum to be wholly payable out of the proceeds of the State tax for the support of common schools. After deducting the said amounts,

he shall divide the remainder of the State school moneys into two parts, one to be one-third and the other to be two-thirds of such remainder, and shall apportion them as hereinafter specified.

By the "free school fund" is meant the money raised by the State tax.

1. The salaries of the school commissioners are first ascertained and set apart from the income of the United States deposit fund.

2. The number of Assemblymen to which each city is entitled is next ascertained, and five hundred dollars for each is set apart either from the income of the United States deposit fund or the common school fund.

3. He sets apart from the income of the United States deposit fund fifty-five thousand dollars, specially appropriated by the Legislature for libraries.

4. He then sets apart from the free school fund, or avails of the State tax, two thousand dollars for a contingent fund.

5. He then sets apart an equitable sum for the support of Indian schools, payable from the "free school fund," or proceeds of the State tax.

The sum of these five items is then deducted from the aggregate of the State school moneys, and the remainder divided into two parts, one consisting of one-third and the other of two-thirds of such remainder.

§ 7. He shall apportion the one-third of the remainder equally among the school districts and cities from which reports shall have been received in accordance with law, as follows:

To entitle a district to a distributive portion or district quota, a qualified teacher, or successive qualified teachers, must have actually taught the common school of the district, for at least the term of time hereinafter mentioned, during the last preceding school year. For every additional qualified teacher and his successors who shall have actually taught in said school during the whole of said term, the district shall be entitled to another distributive quota; but pupils employed as monitors, or otherwise, shall not be deemed teachers. The aforementioned term, during the current school year, shall be six months, and thereafter shall be twenty-eight weeks of five school days each, inclusive of New Year's day, Washington's birthday, the fourth day of July, Christmas day, and any other day which shall be, by law, declared a holiday, which shall occur during the term. A deficiency not exceeding three weeks during the current year, or in any subsequent year, caused by a teacher's attendance upon a teachers' institute within the county, shall be excused.

The one-third is apportioned to those districts, and to those only, that have made their annual report in accordance with law; and their reports must also

show that school has been taught, during the preceding school year, by qualified teachers. (See § 41, of title 7.) If a district has employed a single teacher for the whole term, or has employed one or more teachers, whose terms of service make up the requisite time of twenty-eight weeks, it is entitled to a single quota. If a district has employed two or more teachers, it is entitled to an additional quota for every teacher, or succession of teachers whose terms of service amount to twenty-eight weeks. The number of reported districts increased by the number of additional teachers so employed will give the whole number of quotas in the State. Dividing the "one-third of the remainder" by the whole number of quotas, will give the amount of money to which each district is entitled, and that amount is called the district quota.

The school year is twenty-eight weeks of five days each. No school district will be entitled to any share in the "State school moneys" unless the report of the trustees shows, affirmatively, that a school has been taught the full school year by a qualified teacher. If a legal holiday comes within the term, the teacher will not keep school on that day, nor be required to make it up as a deficiency. A teacher may also be absent in attendance upon a teachers' institute, not exceeding three weeks, and the time so spent will not be deemed a deficiency, and the trustees must pay him as for time employed in his school. (See § 5, of title 11, of this act.)

Evening schools, when conducted under the supervision of trustees, are considered simply as a continuation of the day schools, not as separate branches of the day schools. Those persons attending the evening and not the day schools may be included in the trustees' report of aggregate and average attendance, and public money may be drawn upon their attendance. But persons attending both the day and evening schools should be counted but once in the report of attendance.

§ 8. Having so apportioned and distributed the one-third, the Superintendent shall apportion the two-thirds of the said remainder, and also the library moneys separately, among the counties of the State, according to their respective population, excluding Indians residing on their reservations, as the same shall appear from the last preceding State or United States census; but as to counties in which are situated cities having special school acts, he shall apportion to each city the part to which it shall so appear entitled, and to the residue of the county the part to which it shall appear to be so entitled. If the census according to which the apportionment should be made does not show the sum of the population of any county or city, the Superintendent shall, by the best evidence he can procure, ascertain and determine the population of such county or city at the time the census was taken, and make his apportionment accordingly.

The two-thirds of the said remainder is then apportioned to the several counties and cities having special acts, according to population. A census of the United States is taken every tenth year of the century, as 1810, 1820, and so on. A census of the State is taken once in ten years, also, as 1805, 1815, and so on. The population upon which the apportionment must be based is the last preceding census, whether of the State, or the United States.

The provision in the last sentence of this section was made to meet cases which might arise from the erection of new cities, or counties, or the alteration of their boundaries by the Legislature, thereby taking from or adding to their population, after the last preceding census has been taken.

§ 9. The Superintendent shall apportion to each separate neighborhood which shall have duly reported such fixed sum as will, in his opinion, be equitably equivalent to its portion of all the State school moneys upon the basis of distribution established by this act; such sum to be payable out of the contingent fund hereinbefore established.

The separate neighborhoods formed to accommodate inhabitants whose children can more conveniently attend school in an adjoining State are situated in the towns of Independence, Allegany county; North Castle and Lewisboro, Westchester county; Southport, Chemung county; Nichols, Tioga county, and Hampton, Washington county. The first three only have made reports for the last two years, and the number of children of school age in the three was 39.

§ 10. Whenever any school district or separate neighborhood shall have been excluded from participation in any apportionment made by the Superintendent, or by the school commissioners, by reason of its having omitted to make any report required by law, or to comply with any other provision of law, or with any rule or regulation made by the Superintendent under the authority of law, and it shall be shown to the Superintendent that such omission was accidental or excusable, he may, upon the application of such district or neighborhood, make to it an equitable allowance; and if the apportionment was made by himself, cause it to be paid out of the contingent fund; and, if the apportionment was made by the commissioners, direct them to apportion such allowance to it, at their next annual apportionment, in addition to any apportionment to which it may then be entitled.

§ 11. If money to which it is not entitled, or a larger sum than it is entitled to, shall be apportioned to any county, or part of a county, or school district, and it shall not have been so distributed

or apportioned among the districts, or expended, as to make it impracticable so to do, the Superintendent may reclaim such money or excess, by directing any officer in whose hands it may be to pay it into the State treasury, to the credit of the free school fund; and the State Treasurer's receipt, countersigned by the Superintendent, shall be his only voucher; but, if it be impracticable so to reclaim such money or excess, then the Superintendent shall deduct it from the portion of such county, part of a county or district, in his next annual apportionment, and distribute the sum thus deducted equitably among the counties and parts of counties, or among the school districts in the State entitled to participate in such apportionment, according to the basis of apportionment in which such excess occurred.

§ 12. If a less sum than it is entitled to shall have been apportioned by the Superintendent to any county, part of a county or school district, the Superintendent may make a supplementary apportionment to it, of such a sum as shall make up the deficiency, and the same shall be paid out of the contingent fund, if sufficient, and, if not, then the Superintendent shall make up such deficiency in his next annual apportionment.

Sections 10, 11, and 12 are remedial, and give the Superintendent power to grant relief to districts;

1. For omissions or neglect of duty.
2. For wrong or excessive apportionments of money.
3. For deficiencies in apportionment.

The most common omissions and neglects of duty are failure to report, failure to have school kept during the school year, and the employment of unqualified teachers for a part of the year. If the trustees have any excuse for their neglect or omission of duty, or if circumstances not under their control interfere with its performance, they may make a written statement of facts, and verify it by affidavit, and the Superintendent in his discretion may grant relief.

The errors under the other two heads would arise from wrong computations or mistakes in transcribing, and the Superintendent will correct them as soon as they are brought to his notice.

This power is not to be exercised arbitrarily and without good cause. The Superintendent does not want reasons and argument, but facts. The sickness or death of a trustee will excuse a failure to report. A deep snow, an unexpected storm, or a railroad accident would explain delay. The burning of a school-house, the sickness or death of a teacher, or the prevalence of an epidemic or contagious disease would excuse a failure to keep school for the whole twenty-eight weeks required by law. The facts must be sufficient to

relieve the trustees from all blame. If they are guilty of a willful violation of duty, or of sheer neglect, the Superintendent cannot lawfully grant the district any relief.

§ 13. As soon as possible after the making of any annual or general apportionment, the Superintendent shall certify it to the county clerk, county treasurer, school commissioners and city treasurer or chamberlain, in every county in the State; and if it be a supplemental apportionment, then to the county clerk, county treasurer, and school commissioners of the county in which the neighborhood or the school-house of the district concerned is situate.

§ 14. The moneys so annually apportioned by the Superintendent shall be payable on the first day of February next after the apportionment, to the treasurers of the several counties and the chamberlain of the city of New York respectively; and the said treasurers and chamberlain shall apply for and receive the same so soon as payable.

## SECOND ARTICLE.

*Of trusts for the benefit of common schools, and of town school funds, fines, penalties and other moneys held or given for their benefit.*

§ 15. Real and personal estate may be granted, conveyed, devised, bequeathed and given in trust and in perpetuity, or otherwise, to the State, or to the Superintendent of Public Instruction, for the support or benefit of the common schools within the State, or within any part or portion of it, or of any particular common school or schools within it; and to any county, or the school commissioner or commissioners of any county, or to any city or any board or officers thereof, or to any school commissioner district or its commissioner, or to any town or supervisor of a town, or to any school district or its trustee or trustees, for the support and benefit of common schools within such county, city, school commissioner district, town, or school district or within any part or portion thereof respectively, or for the support and benefit of any particular common school or schools therein.

§ 16. No such grant, conveyance, devise or bequest shall be held void for the want of a named or competent trustee or donee; but where no trustee or donee, or an incompetent one is named,



the title and trust shall vest in the people of the State, subject to its acceptance by the Legislature, but such acceptance shall be presumed.

§ 17. The Legislature may control and regulate the execution of all such trusts; and the Superintendent of Public Instruction shall supervise and advise the trustees, and hold them to a regular accounting for the trust property and its income and interest, at such times, in such forms, and with such authentications, as he shall from time to time prescribe.

§ 18. The common council of every city, the board of supervisors of every county, the trustees of every village, the supervisor of every town, the trustee or trustees of every school district, and every other officer or person who shall be thereto required by the Superintendent of Public Instruction, shall, on or before the thirtieth day of September next, report to him whether any, and, if any, what trusts are held by them respectively, or by any other body, officer or person, to their information or belief, for school purposes, and shall transmit therewith an authenticated copy of every will, conveyance, instrument or paper embodying or creating the trust; and shall, in like manner, forthwith report to him the creation and terms of every such trust subsequently created.

§ 19. Every supervisor of a town shall, by the thirtieth day of September next, report to the Superintendent whether there be, within the town, any gospel or school lot, and, if any, shall describe the same, and state to what use, if any, it is put by the town; and whether it be leased, and if so, to whom, for what term and upon what rents; and whether the town holds or is entitled to any land, moneys or securities arising from any sale of such gospel or school lot, and the investment of the proceeds thereof, or of the rents and income of such lots and investments, and shall report a full statement and account of such lands, moneys and securities (*See sec. 1 of title 4.*)

§ 20. Every supervisor of a town shall, in like manner, by the thirtieth day of September next, report to the Superintendent whether the town has a common school fund originated under the "act relative to moneys in the hands of overseers of the poor," passed April 27, 1829, and, if it have, the full particulars thereof, and of its investment, income and application, in such form as the Superintendent may prescribe (*See sec. 2 of title 5.*)

§ 21. In respect to the property and funds in the two last sections mentioned, the Superintendent shall, at the next session of the Legislature, and annually thereafter, include in his annual report a statement and account thereof. And, to these ends, he is authorized, at any time, and from time to time, to require from the supervisor, board of town auditors, or any officer of a town, a report as to any fact, or any information or account, he may deem necessary or desirable.

§ 22. Whenever, by any statute, a penalty or fine is imposed for the benefit of common schools, and not expressly of the common schools of a town or school district, it shall be taken to be for the benefit of the common schools of the county within which the conviction is had; and the fine or penalty, when paid or collected, shall be paid forthwith into the county treasury, and the treasurer shall credit the same as school moneys of the county, unless the county comprise a city having a special school act, in which case he shall report it to the Superintendent, who shall apportion it upon the basis of population by the last census, between the city and the residue of the county, and the portion belonging to the city shall be paid into its treasury.

The fines and penalties imposed by this act are as follows:

1. Title II, § 10. If a school commissioner neglects his duty the Superintendent of Public Instruction may withhold the whole or a part of his salary.

2. Title II, § 12. If a commissioner acts as agent for the sale of books, he may be removed from office by the Superintendent. He is also guilty of a misdemeanor.

3. Title III, § 26. The embezzlement, the withholding, or the omission to pay into the county treasury of any fine or penalty, collected or received by any officer, is a misdemeanor.

4. Title III, § 32. The supervisor who refuses to give a bond for the school moneys paid into his hands commits a misdemeanor.

5. Title IV, § 3. The supervisor who embezzles any money or security received by him is guilty of a misdemeanor.

6. Title IV, § 5. The supervisor who neglects to make an annual report to the county treasurer of the school moneys in his hands incurs a penalty of twenty-five dollars, to be recovered by his successor in office.

7. Title VI, § 12. The clerk, or other person, refusing to obey an order to deposit the books, papers and records of a dissolved district with the town clerk incurs a penalty of fifty dollars.

8. Title VII, § 5. Any taxable inhabitant refusing to give the notice of a district meeting, under article first of title seven, forfeits five dollars.

9. Title VII, § 14. Any person making a false declaration of his right to vote at a district meeting is guilty of a misdemeanor, and liable to imprisonment not less than six months and not more than a year. Any person not qualified to vote, who votes at a district meeting, forfeits five dollars, to be sued for by the supervisor, for the benefit of the schools of the town.

10. Title VII, § 37, sub. 5. If a district clerk neglect to give notice to all persons elected or appointed to office, and to report their names, and post-office address, to the town clerk, he forfeits five dollars in each instance.

11. Title VII, § 37, sub. 7. If the district clerk neglects to keep and preserve all books and records, and deliver them to his successor, he forfeits fifty dollars for the benefit of the district, to be recovered by the trustees.

12. Title VII, § 34. A person chosen or appointed to a district school office and refusing to serve forfeits five dollars, and any person not having refused to accept office, but neglecting or refusing to perform any duty thereof, vacates his office and forfeits ten dollars.

13. Title VII, § 43. The trustee who applies, or directs, or consents to the application of any public money to the payment of the wages of an unqualified teacher is guilty of a misdemeanor.

14. Title VII, § 57. Every trustee who refuses or neglects to render his annual account in writing to the district meeting, forfeits twenty-five dollars; and every trustee who refuses to pay over to his successor any balance of money in his hands, forfeits twenty-five dollars. He also forfeits his office and becomes liable for the money in his hands.

15. Title VII, § 64. Every trustee who signs a false report, with intent to obtain from a commissioner a larger sum than is legally due the district forfeits twenty-five dollars, and commits a misdemeanor.

16. Title VII, § 89. A collector whose neglect to collect money causes a loss to the district is liable for such loss, and forfeits the amount to the district.

17. Title VIII, § 6. The trustees are liable to the district, and the librarian to the trustees, for loss of books, or damage to them, caused by their neglect of duty.

18. Title VIII, § 11. The fines imposed by the general instructions as to the management and care of libraries are legalized, and may be recovered by the trustees in an action of debt.

19. Title VIII, § 13. If any trustee refuses to make a report of the condition of the library, at the request of the Superintendent of Public Instruction, the library money may be withheld from the district, and the trustee is liable therefor to the district.

20. Title XIII, § 1. The officer of any town, district or separate neighborhood, by whose neglect any money is lost to the district, forfeits the full amount of the loss with interest.

21. Title XIII, § 2. The officer whose duty it is to sue for a fine or penalty, and who neglects to prosecute, is himself liable to pay the penalty.

22. Title XIII, §§ 3 and 4. Every person who willfully disturbs any school, or any lawful meeting held in a school-house, forfeits twenty-five dollars for the

benefit of the district; and a refusal to pay the money, after judgment obtained for it, subjects him to imprisonment for thirty days.

In all cases in which a fine or forfeiture is imposed, and the amount is fixed, or may be ascertained by evidence, suit may be brought before any justice of the peace; or in cases of embezzlement, or withholding of money, when the amount may be large, before a county court, or the supreme court.

Of the twenty-two cases above enumerated, in which penalties are provided for neglect of duty or violation of the school laws, seven are declared to be misdemeanors.

A misdemeanor is any crime or offense less than a felony. A felony is any crime punishable by death or imprisonment in a state prison.

As the school law in these several sections has not in every case prescribed the fine or penalty to be inflicted for the misdemeanor, we must look to the Revised Statutes for instruction.

The fifty-third, fifty-fourth and fifty-fifth sections of part fourth, chapter one, title sixth, Revised Statutes, fifth edition, are applicable.

§ 53. Where any duty is or shall be enjoined by law upon any public officer, or upon any person holding any public trust or employment, every willful neglect to perform such duty, where no special provision shall have been made for the punishment of such delinquency, shall be a misdemeanor punishable as herein prescribed.

§ 54. When the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, either in the same section containing such prohibition, or in any other section or statute, the doing such act shall be deemed a misdemeanor.

§ 55. Every person who shall be convicted of any misdemeanor, the punishment of which is not prescribed in this or some other statute, shall be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

It is to be hoped that there will be no occasion to prosecute for these penalties and forfeitures, nor to punish for these misdemeanors. It is, however, enjoined upon the people, and especially upon school officers, to see that the laws be obeyed, and the offices be faithfully administered.

If, unfortunately, it becomes necessary to prosecute a suit for any penalty, it should be done promptly. Suits for penalties or forfeitures must be brought within three years after the cause of action shall have accrued. See Code of Procedure, chapter 3, section 92.

An indictment for misdemeanor must be found within three years after the commission of the crime. See Revised Statutes, fifth edition, volume 3, page 1017.

A reference to the several sections of the law imposing penalties and forfeitures will show by whom the prosecutions are to be made.

But an indictment must be found by a grand jury, and any person cognizant of the facts can appear before them and testify in any case of misdemeanor; or he may procure the aid of the district attorney, who can issue subpoenas to bring witnesses before the jury.

§ 23. Every district attorney shall report, annually, to the board of supervisors, all such fines and penalties imposed in any prosecution conducted by him during the previous year; and all moneys collected or received by him or by the sheriff, or any other officer, for or on account of such fines and penalties, shall be immediately paid into the county treasury, and the receipt of the county treasurer shall be a sufficient and the only voucher for such money.

§ 24. Whenever a fine or penalty is inflicted or imposed for the benefit of the common schools of a town or school district, the magistrate, constable or other officer collecting or receiving the same, shall forthwith pay the same to the county treasurer of the county in which the school-house is located, who shall credit the same to the town or district for whose benefit it is collected. If the fine or penalty be inflicted or imposed for the benefit of the common schools of a city having a special school act, or of any part or district of a city, it shall be paid into the city treasury.

§ 25. Whenever, by this or any other act, a penalty or fine is imposed upon any school district officer for a violation or omission of official duty, or upon any person for any act or omission within a school district, or touching property or the peace and good order of the district, and such penalty or fine is declared to be for, or for the use and benefit of, the common schools of the town, or of the county, and such school district lies in two or more towns or counties, the town or county intended by the act shall be taken to be the one in which the school-house, or the school-house longest owned or held by the district is, at the time of such violation, act or omission.

§ 26. Any district attorney, sheriff, justice of the peace, police justice or other magistrate or officer, who shall embezzle, or willfully withhold from or omit to pay into the county treasury any money received or collected in payment or satisfaction, in whole or in part, of any fine or penalty in the four last preceding sections mentioned, shall be guilty of a misdemeanor; and any fine imposed upon a conviction thereof shall be for the benefit of the common schools of the county.

## THIRD ARTICLE.

*Of the apportionment of the State school moneys, and of other school moneys, by the school commissioners, and their payment to the supervisors.*

§ 27. The school commissioner, or commissioners of each county, shall proceed, at the county seat, on the third Tuesday of March in each year, to ascertain, apportion and divide the State and other school moneys as follows :

1. They shall set apart any library moneys apportioned by the Superintendent.

2. From the other moneys apportioned to the county, they shall set apart and credit to each separate neighborhood and school district the amount apportioned to it by the State Superintendent, and to every district which did not participate in the apportionment of the previous year, and which the Superintendent shall have excused, such equitable sum as he shall have allowed to it.

3. They shall procure from the treasurer of the county a transcript of the returns of the supervisors hereinafter required, showing the unexpended moneys in their hands applicable to the payment of teachers' wages and to library purposes, and shall add the whole sum of such moneys to the balance of the State moneys to be apportioned for teachers' wages. The amounts in each supervisor's hands shall be charged as a partial payment of the sums apportioned to the town for library moneys and teachers' wages respectively.

4. They shall procure from the county treasurer a full list and statement of all payments to him of moneys for or on account of fines and penalties, or accruing from any other source, for the benefit of schools and of the town or towns, district or districts for whose benefit the same were received. Such of said moneys as belong to a particular district, they shall set apart and credit to it ; and such as belong to the schools of a town, they shall set apart and credit to the schools in that town, and shall apportion them, together with such as belong to the schools of the county, hereinafter provided, for the payment of teachers' wages.

5. They shall apportion the library moneys to the school districts and parts of school districts joint with parts in any city or in an adjoining county, which shall be entitled to participate therein as hereinafter specified, in proportion to the number of

children in each between the ages of five and twenty-one years, as the same shall appear from the reports of the trustees for the last preceding school year.

6. They shall apportion in like manner and upon the same basis, until the apportionment of the year eighteen hundred and sixty-six, the remaining unapportioned moneys among such school districts and parts of school districts.

7. In the apportionment of eighteen hundred and sixty-six, and in every subsequent apportionment, they shall apportion one-half of such remaining unapportioned moneys, in the like manner and upon the same basis, among such school districts and parts of districts; and the other half they shall apportion among such districts and parts of districts, in proportion to the average daily attendance of the pupils resident therein between the ages of five and twenty-one years, at their respective schools during the last preceding school year. The average daily attendance of the pupils is to be ascertained from the records thereof kept by the teachers, as hereinafter prescribed, by adding together the whole number of days' attendance of each and every such pupil in the district, or part of a district, and dividing the aggregate by the whole number of days the school was kept during the year.

8. They shall then set apart to each town the moneys so set apart and apportioned to each separate neighborhood; to each district the school-house of which is therein; and to each part of a joint district therein the school-house of which is located in a city or in a town in an adjoining county.

9. They shall sign, in duplicate, a certificate, showing the amounts apportioned and set apart to each separate neighborhood, school district and part of a district, and the towns in which they are situated, and shall designate therein the source from which each item of the aggregate to each district and town was derived; and shall forthwith deliver one of said duplicates to the treasurer of the county and transmit the other to the Superintendent of Public Instruction.

10. They shall certify to the supervisor of each town the amount of school moneys so apportioned to his town, and the portions thereof to be paid by him for library purposes and for teachers' wages, to each such distinct separate neighborhood, district and part of a district.

The commissioners, before proceeding to make their apportionment, will examine their statistical abstracts of the reports of the trustees, and see that they are correct. If, since the abstracts have been made, errors have been discovered, let them be corrected.

Inquire, also, of the county treasurer, whether the several supervisors have made the return of school moneys remaining in their hands, as directed by section four of title four, of the school act.

See further, whether the district attorney, sheriff, or any other officer, has paid into the county treasury any moneys collected for fines and penalties, as directed by section twenty-three, of title three.

In case of joint districts, the apportionment is to be made according to the number of children and the average daily attendance for that part only of the district situated in the county.

The apportionment for average daily attendance must be made, not for the average daily attendance of *all* the children attending the school, but for the average daily attendance of children attending the schools in the districts in which they reside. That is, *resident* children only are to be enumerated as a basis of apportionment.

In accordance with section seven and section twenty-nine of this title, no apportionment of school moneys can be made by the commissioners to districts to which the Superintendent has not apportioned the district quota, in consequence of not having maintained school twenty-eight weeks by a qualified teacher.

Having settled these preliminaries and ascertained the amount of moneys to be apportioned, every thing is in readiness for the work. The following is an example of the process, for which we use the statistics taken from the annual abstracts sent to the department in the year 1865, by the commissioners of Jefferson county :



STATISTICAL.

*First Commissioner District.*

TOWNS.	No. of children over 5 and under 21 years of age.	No. of children over 5 and under 21 years of age in districts not entitled to apportionment.	No. of children in districts entitled to apportionment.	Ave'ge daily attendance of children residing in districts.	Ave'ge daily attendance of children in districts not entitled to an apportionment.	Ave'ge daily attendance of children residing in districts entitled to an apportionment.
Adams, .....	1,064	84	980	301.640	27.246	274.394
Brownville, .....	1,244	.....	1,244	460.868	.....	460.868
Ellisburgh, .....	1,644	.....	1,644	576.599	.....	576.599
Henderson, .....	652	30	622	218.897	6.386	212.481
Hounsfield, .....	944	.....	944	308.153	.....	308.153
Lorraine, .....	595	.....	595	187.969	.....	187.969
Rodman, .....	521	.....	521	226.483	.....	226.483
Worth, .....	206	.....	206	73.249	.....	73.249
Totals, .....	6,870	114	6,756	2,358.828	33.632	2,320.196

*Second Commissioner District.*

Antwerp, .....	1,153	31	1,122	350.840	7.711	343.129
Champion, .....	778	.....	778	248.133	.....	248.133
Le Ray, .....	947	31	916	340.350	9.000	331.350
Philadelphia, .....	592	.....	592	199.452	.....	199.452
Rutland, .....	565	.....	565	216.554	.....	216.554
Watertown, .....	2,941	.....	2,941	876.047	.....	876.047
Wilna, .....	1,597	75	1,522	441.871	19.556	422.315
Totals, .....	8,573	137	8,436	2,673.297	36.267	2,637.030

*Third Commissioner District.*

Alexandria, .....	1,386	.....	1,386	414.801	.....	414.801
Cape Vincent, .....	1,258	77	1,181	358.674	16.031	342.643
Clayton, .....	1,705	76	1,629	552.691	20.529	532.162
Lyme, .....	838	46	792	305.737	19.214	286.523
Orleans, .....	1,074	30	1,044	376.178	16.842	359.336
Pamela, .....	754	40	714	268.010	11.677	256.333
Theresa, .....	917	.....	917	314.522	.....	314.522
Totals, .....	7,932	269	7,663	2,590.613	84.293	2,506.320
			8,436			2,637.030
			6,756			2,320.196
Total for County, .....			22,855			7,463.456

## FINANCIAL.

*Supposed statement of moneys in hands of Supervisors, rendered by the County Treasurer to the School Commissioners.*

1st Commissioner District.	2d Commissioner District.	3d Commissioner District.
Adams,..... \$11 50	Antwerp,..... \$2 00	Alexandria,..... \$5 15
Brownville,..... 5 30	Champion, .. 1 25	Cape Vincent, ..... 4 26
Ellisburgh,..... 1 28	Le Ray,.....	Clayton,..... 1 15
Henderson,..... 45	Philadelphia,.....	Lyme,..... 5 12
Hounsfield,..... 3 10	Rutland,..... 3 18	Orleans,.....
Lorraine,..... 38	Watertown,..... 7 28	Pamelia,.....
Rodman,.....	Wilna,..... 56	Theresa,..... 7 15
Worth,..... 1 24		
\$23 25	\$14 27	\$22 83
	22 83	
	23 25	
Total for the county, ....	\$60 35	

*General Statement of School Moneys to be Apportioned.*

391 district quotas at \$28.29 each,.....	\$11,061 39
Pupil and average attendance quotas,.....	15,234 86
Library money,.....	954 80
Allowed for district quotas since general apportionment, ...	56 58
In hands of supervisors,.....	60 35
Total,.....	\$27,367 98
Amount for pupil and average attendance quotas,.....	\$15,234 86
Amount in hands of supervisors,.....	60 35
The statement procured from the county treasurer, in compliance with subdivision 4 of section 27, of title 3, Consolidated School Law of 1864, shows no moneys in his hands from fines, penalties, etc.	
Total,.....	\$15,295 21
Deduct amount ordered by Superintendent of Public Instruction as equitable allowances to districts not strictly entitled to an apportionment, in place of pupil and average attendance quotas. (See section 10, title 3, Consolidated School Law of 1864),.....	65 21
Balance,.....	\$15,230 00

In cases where district quotas shall have been allowed as supplementary quotas, by the Superintendent, subsequent to the time of making his general apportionment, notice will be given to the commissioners interested.

Before proceeding to make the regular apportionment, there must also be deducted, from the moneys set apart for pupil and average attendance quotas, the equitable allowances made by the Superintendent to districts that have forfeited their money. The pupil and average attendance quotas will be found in the apportionment for the previous year. Having then ascertained the number of children entitled to share in the pupil and library money, multiply the pupil quota and library quota, respectively, by the number of such children, and the products will be the sums to be allowed to the district for pupil and library

money. Then multiply the daily attendance quota by the average daily attendance, and the product will be the average attendance money.

This balance of \$15,230 is to be apportioned for teachers' wages; one-half according to the number of children over five and under twenty-one years of age, and the other half according to the average daily attendance.

One-half of \$15,230 is \$7,615. This sum divided by 22,855, the number of children over five and under twenty-one years of age, residing in those districts strictly entitled to share in the apportionment, gives \$0.3331875 as the quota of this money for each pupil.

\$0.3331875 multiplied by 6,756 gives for 1st commissioner district,.....	\$2,251 01
“ “ 8,436 “ 2d “ “ .....	2,810 77
“ “ 7,663 “ 3d “ “ .....	2,553 22
Total, .....	<u>\$7,615 00</u>

\$7,615 divided by 7,463.546, the average daily attendance for the county, gives \$1.0202925 as the average daily attendance quota for an average daily attendance of one pupil.

\$1.0202925 multiplied by 2,320.196 gives for 1st commissioner district, .....	\$2,367 28
“ “ 2,637.030 “ 2d “ “ .....	2,690 54
“ “ 2,506.320 “ 3d “ “ .....	2,557 18
Total, .....	<u>\$7,615 00</u>

\$954.80, library money, divided by 22,855 (number of children as above) gives, as the quota of library money for each pupil, \$0.0417764.

\$0.0417764 multiplied by 6,756 gives for 1st commissioner district,.....	\$282 24
“ “ 8,436 “ 2d “ “ .....	352 43
“ “ 7,663 “ 3d “ “ .....	320 13
Total, .....	<u>\$954 80</u>

Each school commissioner will now, in the first place, apportion to each town the money belonging to it.

*First Commissioner District.*

Pupil Quota.	No. Children.	Towns.	
\$0.3331875 multiplied by 980 gives for		Adams,.....	\$326 52
“ “ 1244	“	Brownville, .....	414 48
“ “ 1644	“	Ellisburgh, .....	547 76
“ “ 622	“	Henderson,.....	207 24
“ “ 944	“	Hounsfield,.....	314 53
“ “ 595	“	Lorraine, .....	198 24
“ “ 521	“	Rodman, .....	173 00
“ “ 206	“	Worth, .....	68 64
Total, .....			<u>\$2,251 01</u>

In the same manner apportion the library money for the first commissioner district, using the library quota for multiplicands, and the number of children, as above, for multipliers; and also the moneys to be apportioned according to

average daily attendance, using the average daily attendance quota for multiplicands and the average daily attendance, for the respective towns, for multipliers.

Each commissioner will, in the same manner, apportion the moneys for his district to the respective towns therein. The moneys apportioned to each town will then be apportioned to the respective school districts and parts of joint districts, in such town, entitled to share in the apportionment, according to the number of children over five and under twenty-one years of age, and the average daily attendance of such children, residing in such districts and parts of districts respectively.

The pupil quota, the average daily attendance quota, and the library quota, will be, for every commissioner district, and every school district in the county, the quotas already used. This will be the fact in *every county*, except in cases where there are in the hands of the county treasurer moneys derived from fines or penalties, or some other local source, which funds are placed, not to the credit of the county, but of particular towns.

*All the library money* must be apportioned according to the number of children over five and under twenty-one years of age.

After placing the moneys for each school district in their appropriate columns in the apportionment table, add the sums horizontally, and foot them vertically, and thus verify the work, and write the footings of the columns for each town.

In cases where there are found in the hands of the county treasurer moneys paid to him on account of fines or penalties, or accruing from any other source, for the benefit of schools, and of the town or towns, district or districts for whose benefit the same were received, such of said moneys as belong to a particular district the commissioners must set apart and credit to it; and such as belong to the schools of a town they must set apart and credit to the schools of that town, and apportion them, together with such as belong to the schools of the county, for the payment of teachers' wages. These moneys should be apportioned, one-half according to the number of children over five and under twenty-one years of age, and the other half according to the average daily attendance.

There should be appended to the apportionment a "Special Statement" of such moneys, showing the sources whence they were derived, and the sum received from each source specified; and stating, in case of each sum, whether it is placed to the credit of the schools of the county, or those of a particular town, or to a particular school district.

The commissioners will find it convenient to make auxiliary tables, having one column showing the amount of library money to be apportioned for any number of children from one to one hundred, and another column showing the amount to be apportioned for teachers' wages in the same cases. A third column should be added, giving the sums to be apportioned for any average daily attendance from one to one hundred.

Since the *average daily attendance* for school districts is in most cases extended to decimals of three figures each, it may not be amiss to make a remark in regard

to the proper mode of using the table in apportioning that part of the money which is distributed according to the *average daily attendance*.

Suppose, for instance, we wish to apportion to a district whose average daily attendance is 357.892. Take from the table the money to be apportioned for an average daily attendance of 35 pupils. Move the decimal point one place to the right and you will have the amount corresponding to 350 pupils. Now take from the table the sum corresponding to an attendance of 78 pupils. Move the decimal point one place to the left and you will have the sum corresponding to 7.8 pupils. Take the sum apportionable for an attendance of 92 pupils. Move the decimal point three places to the left and you will have the sum for an average daily attendance of .092. The average daily attendances, 350, 7.8 and .092, when added, give 357.892 pupils. The three sums of money found as directed, and added, will give the amount of money to be apportioned for this average daily attendance (357.892 pupils).

A form is sent to each county, as a part of the blanks for apportionment, in which each commissioner should make a "Summary Statement" for his commissioner district, recapitulating the footings by towns, and giving the total footings for his district. A final summary statement should also be made, recapitulating the footings by commissioner districts, and giving the total footings for the county.

The blanks in the printed forms of statements showing the amount of school moneys received and apportioned, and the blanks for special statement in regard to local funds, should be properly filled. The "certificate" following the forms for statements should be signed by all the commissioners of the county.

After making, for any supervisor, the statement of the apportionment for the school districts, the school-houses of which are in his town, and the parts of joint districts in his town, write at the right hand of the words "Amount now in supervisor's hands," the amount reported by the county treasurer as in his hands. Subtract, and write the balance at the right hand of the words "Balance to be drawn from county treasurer."

In making the enumeration of the school districts of each town, in the apportionment, arrange them according to their present numbers, in regular consecutive order from the lowest to the highest number, inserting in its proper order the number of every district, whether any money is apportioned to it or not. In some cases there may be difficulty in identifying certain districts, since, in many instances, commissioners may have changed the district number, and inserted the new number in the abstracts, and afterward again changed the district number; making, in all, three numbers by which the district has been known. By an examination of the blanks for the apportionment, it will appear to be necessary to give the three numbers in each case. By no other means can the Superintendent know that the apportionment is correctly made, and that the commissioners understand all the changes as they have been reported to the department.

Send to each supervisor, with the apportionment for his town, a blank for his use in making a copy to file with the town clerk.

The apportionment should be made at the earliest possible day, and the duplicate be forthwith sent to the Department of Public Instruction.

§ 28. If in their apportionment, through any error of the commissioners, any district shall have apportioned to it a larger or a less share of the moneys than it is entitled to, the commissioners may in their next annual apportionment, with the approbation of the Superintendent, correct the error by an equitable deduction from or augmentation of the share of such district.

The simplest method of correcting the error of an excess of money apportioned to one or more districts is as follows: If one district had an excess of \$10 (money apportioned according to the number of children); another of \$6.45; a third of \$4.50; and a fourth of \$15; add them together, and the sum \$35.95 add to and apportion with the money to be apportioned among all the districts. Then deduct from the sum thus apportioned to each district the excess paid to it the last year, and the remainder will be its share of the present apportionment. Apply the same rule in case the excess be of library money, or average attendance money. If the error be one of deficiency in a former apportionment, the correction is made by setting apart from the money to be apportioned a sum equal to the sum of the deficiency, or several deficiencies, and then, having apportioned the residue among all the districts, out of the money so set apart add to the sum thus apportioned to each district an amount equal to its former deficiency.

§ 29. No district or part of a district shall be entitled to any portion of such school moneys on such apportionment unless the report of the trustees for the preceding school year shall show that a common school was supported in the district and taught by a qualified teacher for such a term of time as would, under section seven of this title, entitle it to a distributive share under the apportionment of the Superintendent.

§ 30. On receiving the certificate of the commissioners, each supervisor shall forthwith make a copy thereof for his own use, and deposit the original in the office of the clerk of his town; and the moneys so apportioned to his town shall be paid to him immediately on his compliance with the requirements of the next section, and not before.

§ 31. Immediately on receiving the commissioners' certificate of apportionment, the county treasurer shall require of each supervisor, and each supervisor shall give to the treasurer in behalf of the town, his bond, with two or more sufficient sureties, approved

by the treasurer, in the penalty of at least double the amount of the school moneys set apart or apportioned to the town, and of any such moneys unaccounted for by his predecessor, conditioned for the faithful disbursement, safe keeping and accounting for such moneys, and of all other school moneys that may come into his hands from any other source. If the condition shall be broken, the county treasurer shall sue the bond in his own name, in behalf of the town, and the money recovered shall be paid over to the successor of the supervisor in default, such successor having first given security as aforesaid.

The bond to be given under this section must be renewed every year, as its penalty in each case is to be double the amount of the school moneys then to be paid. Its form may be as follows:

KNOW ALL MEN BY THESE PRESENTS, That we, John Doe, supervisor of the town of \_\_\_\_\_, in the county of \_\_\_\_\_, and Richard Roe and Samuel Styles, of the same town (or as their residence respectively may be), as his sureties, are held and firmly bound unto Stephen Holdfast, treasurer of the county of \_\_\_\_\_, in the penalty of \_\_\_\_\_ dollars and \_\_\_\_\_ cents (being double the amount of the public moneys apportioned for the support of schools in the town of \_\_\_\_\_, aforesaid), to be paid to the said Stephen Holdfast, treasurer, his successors in office, attorney or assigns; to which payment, well and truly to be made, we bind ourselves jointly and severally by these presents. Sealed with our seals, and dated this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_.

The condition of this obligation is such, that if the above bounden John Doe, supervisor, shall faithfully disburse, safely keep and justly account for the school moneys apportioned as aforesaid, and all other school moneys that may come into his hands from any other source, then this obligation to be void, otherwise to remain in full force and virtue.

JOHN DOE.	[L. s.]
RICHARD ROE.	[L. s.]
SAMUEL STYLES.	[L. s.]

This bond, as a matter of prudence, should be acknowledged before a commissioner of deeds or other officer authorized to take acknowledgments, and the sureties should be required to indorse upon the bond an affidavit that each of them is a freeholder, and worth the amount of the penalty over and above all debts incurred or liabilities assumed by him. It is only upon such an affidavit that bonds required in legal proceedings are approved; and it is a matter of justice to the county treasurer that he should protect himself from personal liability for taking an insufficient bond by following the legal method of ascertaining its sufficiency. If, after such affidavits are indorsed on the

bond, the county treasurer is satisfied with the sureties, he should indorse his approval in the following form :

I hereby approve the within bond, as to its form and manner of execution and the sufficiency of the sureties therein. Dated

STEPHEN HOLDFAST,  
*Treasurer of                      County.*

§ 32. The refusal of a supervisor to give such security shall be a misdemeanor, and any fine imposed on his conviction thereof shall be for the benefit of the common schools of the town. Upon such refusal, the moneys so set apart and apportioned to the town shall be paid to and disbursed by some other officer or person to be designated by the county judge, under such regulations and with such safeguards as he may prescribe, and the reasonable compensation of such officer or person, to be adjusted by the board of supervisors, shall be a town charge (*See sec. 22 of this title*).

## TITLE IV.

OF THE DISBURSEMENT OF THE SCHOOL MONEYS BY THE SUPERVISORS,  
AND OF SOME OF THEIR SPECIAL POWERS, DUTIES AND LIABILITIES  
UNDER THIS ACT.

SECTION 1. The several supervisors continue vested with the powers and charged with the duties formerly vested in and charged upon the trustees of the gospel and school lots, and transferred to and imposed upon town superintendents of common schools by chapter one hundred and eighty-six, of the Laws of one thousand eight hundred and forty-six (*See sec. 19 of title 3*).

### *Town School Funds.*

The act passed in 1789 for the sale of lands belonging to the people of this State required the Surveyor-General to reserve, in each township, one lot for the support of the gospel, and one lot for the use of schools in such township.

The following is a list of the principal reservations of this nature, viz. :

One lot, of 550 acres, in each of the twenty-eight townships in the military tract.

Forty lots, of 250 acres each, in each of the twenty townships west of the Unadilla river, being ten thousand acres.

One lot, of 640 acres, in each of the townships of Fayette, Clinton, Greene, Warren, Chenango, Sidney and Hampden, then in the counties of Broome and Chenango.

Ten lots, of 640 acres each, in the townships along the St. Lawrence.



In the township of Plattsburgh 400 acres were reserved for the use of a minister of the gospel, and 460 acres for the use of a public school or schools in the said township.

In the township of Benson 640 acres were reserved for gospel and schools.

By an act passed in 1798, in relation to gospel and school lots, it is provided "that the moneys arising from the leasing of the said lots of land as aforesaid, and from the trespasses aforesaid, shall be applied to the use of schools or support of the gospel in the original townships, as surveyed, in which such lots shall be respectively situated, and for no other purpose; which said application shall be made either for schools or gospel, or both, and in such way and manner as the freeholders and inhabitants of the towns, in which the same lands shall lie, shall in legal town meeting from time to time direct, order and appoint."

By an act passed in 1808, the act of 1798 was extended to all the townships where lots of land are reserved for the support of gospel and schools, and the following provision was added:

"§ 1. *Be it enacted, etc.,* That the moneys arising from the annual rents and profits of the gospel lots in each township shall be equally divided, by the supervisor and commissioners appointed in each township, between the several religious societies legally organized in such township, and that the money arising from the annual rents and profits of the several school lots shall be distributed among the schools kept in each respective township by teachers to be approved of by the supervisor and commissioners constituted by the act to which this is an amendment, or a majority of them in said township, in proportion to the aggregate number of days which the scholars in each respective school shall have respectively attended such schools in the year immediately preceding such division."

The fourth section of an act concerning the gospel and school lots, passed in 1813, is as follows:

"*And be it further enacted,* That the rents, issues and profits of the aforesaid lands, and the annual interest of the moneys arising from the sale thereof, shall be applied by the said trustees [supervisor] for the time being to the support of the gospel and schools in their several towns, in such manner as the freeholders and inhabitants of the towns, respectively, at their annual town meeting, shall order and direct, or as the Legislature shall prescribe by law." (*Session Laws of 1813, p. 157.*)

In 1819, an act was passed in relation to the gospel and school lots, which contains the following section:

"§ 2. *And be it further enacted,* That all moneys now due or hereafter to become due, and which shall have come into the hands of the aforesaid commissioners of public lots, and have not been applied and paid over to religious societies, shall be apportioned among the several school districts in the several towns of the aforementioned counties [Onondaga, Cayuga and Seneca], any thing in the acts heretofore passed to the contrary notwithstanding."

By section 1 of chapter 186, Laws of 1846, "the office of trustees of the gospel and school lots in the several towns in this State is hereby abolished; and the powers and duties now by law conferred and imposed upon said trustees shall hereafter be exercised by the town superintendent of common schools [supervisor]."

By the provisions of chapter 15, title 4, of part 1 of the Revised Statutes, the trustees of the several gospel and school lots [supervisor] were authorized and required :

"1. To take and hold possession of the gospel and school lot of their town ;  
 "2. To lease the same for such time, not exceeding twenty-one years, and upon such conditions, as they shall deem expedient ;

"3. To sell the same, with the advice and consent of the inhabitants of the town, in town meeting assembled, for such prices and upon such terms of credit as shall appear to them most advantageous ;

"4. To invest the proceeds of such sales in loans secured by bond and mortgage upon unincumbered real property of the value of double the amount loaned ;

"5. To purchase property so mortgaged upon a foreclosure, and to hold and convey the property so purchased, whenever it shall become necessary ;

"6. To release the amount of such loans repaid to them upon the like security ;

"7. To apply the rents and profits of such lots, and the interest of the money arising from the sale thereof, to the support of the gospel and schools, or either, as may be provided by law, in such manner as shall be thus provided ;

"8. To render a just and true account of the proceeds of the sales, and the interest on the loans thereof, and of the rents and profits of such gospel and school lots, and of the expenditure and appropriation thereof, on the last Tuesday next preceding the annual town meeting in each year, to the board of auditors of the accounts of other town officers ;

"9. To deliver over to their successors in office all books, papers and securities relating to the same, at the expiration of their respective offices ; and

"10. To take therefor a receipt, which shall be filed in the clerk's office of the town.

"§ 4. The board of auditors in each town shall annually report the state of the accounts of the trustees of the gospel and school lots [supervisor] in that town to the inhabitants thereof, at their annual town meeting.

"§ 5. Whenever a town, having lands assigned to it for the support of the gospel or of schools, shall be divided into two or more towns, or shall be altered in its limits by the annexing of a part of its territory to another town or towns, such lands shall be sold by the trustees [supervisor] of the town in which such lands were included immediately before such division or alteration ; and the proceeds thereof shall be apportioned between the towns interested therein, in the same manner as the other public moneys of towns so divided or altered are apportioned.

"§ 6. The shares of such moneys to which the towns shall be respectively entitled shall be paid to the trustees of the gospel and school lots [supervisor] of the respective towns, and shall thereafter be subject to the provisions of this title.

"§ 7. If in either of such towns trustees of gospel and school lots shall not have been chosen, or there be none in office, the share of such town shall be paid to the supervisor."

§ 2. The several supervisors continue vested with the powers and charged with the duties conferred and imposed upon the commissioners of common schools by the act of eighteen hundred and twenty-nine, entitled "An act relative to moneys in the hands of overseers of the poor."

The act herein referred to is as follows ; the word "supervisor" being substituted in place of "town superintendent" wherever the latter is used :

## AN ACT

*Relative to moneys in the hands of overseers of the poor. Passed April 27, 1829.*

“§ 1. It shall be lawful for the inhabitants of any town, in such counties as have abolished the distinction between county and town paupers, and in such counties as may hereafter abolish such distinction, at any annual or special town meeting, to appropriate all or any part of the moneys and funds remaining in the hands of the overseers of the poor of such town, after such abolition, to such objects and for such purposes as shall be determined at such meeting.

“§ 2. If any such meeting shall appropriate any such money or funds for the benefit of common schools in their town, the money so appropriated shall be denominated ‘the common school fund of such town,’ and shall be under the care and superintendence of the [supervisor] of said town.

“§ 3. If any such meeting shall appropriate such money or funds for the benefit of common schools, after such appropriation shall have been made, and after the [supervisors] shall have taken the oath of office, the overseers of the poor of such towns shall then pay over and deliver to the said [supervisor] such moneys, bonds, mortgages, notes and other securities remaining in their hands, as such overseers of the poor, as will comport with the appropriation made for the benefit of common schools of their town.

“§ 4. The said [supervisors] may sue for and collect, in their name of office, the money due or to become due on such bonds, mortgages, notes or other securities, and also all other securities by them taken under the provisions of this act.

“§ 5. The moneys, bonds, mortgages, notes and other securities aforesaid, shall continue and be a permanent fund, to be denominated the common school fund of the town appropriating the same, the annual interest of which shall be applied to the support of common schools in such towns, unless the inhabitants of such town, in annual town meeting, shall make a different disposition of the whole of the principal and interest, or any part thereof, for the benefit of the common schools of such town.

“§ 6. The said [supervisors], whenever the whole or any part of the principal of said fund shall come to their hands, shall loan the same on bond, secured by a mortgage on real estate of double the value of the moneys so loaned, exclusive of buildings or artificial erections thereon.

“§ 7. The said [supervisors] may purchase in the estate on which the fund shall have been secured, upon the foreclosure of any mortgage, and may hold and convey the same for the use of said fund.

“§ 8. The said [supervisors] shall retain the interest of said common school fund, which shall be distributed and applied to the support of common schools of such town, in like manner as the public money for the support of common schools shall be distributed by law.

“§ 9. The said [supervisors] shall account annually, in such manner and at such times as town officers are required by law to account, and shall deliver to their successors in office, all moneys, books, securities and papers whatsoever relating to said fund, and shall take a receipt therefor, and file the same with the town clerk.”

§ 3. A supervisor who shall embezzle or apply to his own private use any money or security received by him under any provisions of this act, including the two preceding sections of this title, shall be guilty of a misdemeanor, and any fine imposed upon a conviction thereof shall be for the benefit of the common schools of the town. (*See sec. 22, of title 3.*)

§ 4. On the first Tuesday of March in each year, each supervisor shall make a return in writing to the county treasurer for the use of the school commissioners, showing the amounts of school moneys in his hands not paid out on the orders of trustees for teachers' wages, nor drawn by them for library purposes, and the districts to which they stand accredited (and if no such money remain in his hands, he shall report that fact); and thereafter he shall not pay out any of said moneys until he shall have received the certificate of the next apportionment; and the moneys so returned by him shall be re-apportioned as hereinbefore directed.

§ 5. Any supervisor who neglects to make the said return, or shall make a false return, shall forfeit twenty-five dollars, to be recovered by his successor in office, or, if he be re-elected, by the county treasurer of the county in which the town lies, for the benefit of the common schools of the county. (*See sec. 22, of title 3.*)

§ 6. It is the duty of every supervisor:

1. To disburse the school moneys in his hands applicable to teachers' wages, including the library moneys apportioned to the district, if they do not exceed three dollars, and library moneys made so applicable by the approbation of the State Superintendent, upon, and only upon, the written orders of a sole trustee or of a majority of the trustees in favor of qualified teachers, or upon the order of the trustee of a separate neighborhood in favor of any teacher of a school in an adjoining State, recognized by him and patronized by the inhabitants of such neighborhood; such teacher shall be deemed a qualified teacher;

2. To disburse library moneys other than those above-mentioned, upon, and only upon, the written orders of a sole trustee, or of a majority of the trustees, certifying that they are for books actually purchased or contracted for, or for maps, globes, blackboards, or other apparatus for the use of the school, duly authorized by a vote of the district to be purchased with such moneys, and naming the books or the school apparatus, and the prices;

3. In the case of a union free school district, to pay over all the school money apportioned thereto, whether for the payment of teachers' wages, or as library moneys, to the treasurer of such district, upon the order of its board of education;

4. To keep a just and true account of all the school moneys received and disbursed by him during each year, and to lay the

same, with proper vouchers, before the board of town auditors at each annual meeting thereof;

5. To have a bound blank book (the cost of which shall be a town charge), and to enter therein all his receipts and disbursements of school moneys, specifying from whom and for what purposes they were received, and to whom and for what purposes they were paid out; and to deliver the book to his successor in office;

6. Within fifteen days after the termination of his office, to make out a just and true account of all school moneys theretofore received by him, and of all disbursements thereof, and to deliver the same to the town clerk, to be filed and recorded, and to notify his successor in office of such rendition and filing;

7. So soon as the bond to the county treasurer, by the third article of the third title of this act required, shall have been given by him and approved by the treasurer, to deliver to his predecessor the treasurer's certificate of these facts, to procure from the town clerk a copy of his predecessor's account, and to demand and receive from him any and all school moneys remaining in his hands;

8. Upon receiving such a certificate from his successor, and not before, to pay to him all school moneys remaining in his hands, and to forthwith file the certificate in the town clerk's office;

9. By his name of office, when the duty is not elsewhere imposed by law, to sue for and recover penalties and forfeitures imposed for violations of this act, and for any default or omission of any town officer or school district board or officer under this act; and, after deducting his costs and expenses, to report the balances to the school commissioner;

10. To act, when thereto legally required, in the erection or alteration of a school district, as in the sixth title of this act provided, and to perform any other duty which may be devolved upon him by this act, or any other act relating to common schools.

The law which governed town superintendents, and now governs the supervisors, in the disbursement of so much of the school moneys as is apportioned for the payment of teachers' wages, requires them to pay it upon written orders drawn upon them by a sole trustee or a majority of the trustees of each district in favor of qualified teachers. If the order is regular upon its face—that is to say, if it bears the signature of a majority of the persons acting in

fact as trustees of a district, under color of an election, in favor of a person whom it states to be a duly qualified teacher employed by them in the district during the year in which it is drawn, and in payment of his wages as such teacher—it is a sufficient voucher for the supervisor, and it is not for him to inquire whether the trustees have exceeded their authority or acted improperly in drawing the order. If presented by any other person than the teacher in whose favor it is drawn, it should bear his written indorsement or order for payment to a specified person.

Library money may be paid to any person upon the written order of a majority of the trustees.

The account to be kept under this section may be a simple cash account, in which the supervisor, *personally* and in his individual name, is charged with all school moneys received by him and credited with each payment, specifying the date, the person to whom and the account on which it was made. It would conduce to accuracy and convenience, in passing his accounts before the board of town auditors, to number each credit consecutively, and to affix the same number to the order, receipt or other voucher to be produced in proof of payment and in support of such credit. This account should be kept in a bound book, to be handed over to his successor in office, and a transcript of such account to be drawn off, and, with the accompanying vouchers, be presented to the board of town auditors for their examination. As that examination may take place before the close of his official term, it would be well, upon its completion, to have the town auditors enter upon the *original* account, in the blank book, their certificate that they have examined such account up to and including the last preceding entry (giving its date) and the vouchers therefor, and have audited and allowed the same.

In addition to the cash account of the individual supervisor, a continuous account is to be kept between each district and the supervisor, officially, without break or change when a new incumbent succeeds to the office.

The board of town auditors is required by law to meet annually in each town, at the place of holding the last town meeting, on the last Thursday preceding the annual meeting of the board of supervisors of the county. (*Chapter 228 of 1844.*) It consists, for the purpose of examining the supervisor's account, of the town clerk and justices, or any two of the justices, of the peace. The supervisor, who is ordinarily a member, cannot, of course, act in his own case. The account to be presented to them is to be accompanied by an affidavit, attached to, and to be filed with, such account, made by the person presenting or claiming the same, that the items of such account are correct, and that the disbursements charged therein have been in fact made. (*Section 2, chapter 490 of 1847.*)

The account to be rendered by the supervisor to his successor in office includes as well that portion thereof which has been examined by the town auditors as that which relates to his subsequent receipts and disbursements. Inasmuch as it is to be filed and recorded in the office of the town clerk, it must, independent of and in addition to the original cash account, be entered upon the blank book.

The object of an account book to be kept by the supervisor and to pass to his successors in office, is to enable the latter to ascertain at any future time the state of the accounts of each district with any of their predecessors at any given date. To effect this object it is essential that a separate account should be kept with the trustees of each district and separate neighborhood, regarding them as a perpetual corporation. It is in substance an account between the district and the town, which is not broken or affected by any change in the officers of either. It may be in the following form:

*Trustees of District No. 2, with the Supervisor of Town of*

Dr.			Cr.		
1856			1856		
July 27th. To paid Miss Anna Davis, teacher's wages, on order of J. D. and C. S., trustees (voucher No. 12),...	\$42	60	June 7th. By cash received from late town superintendent for teachers' wages,.....	\$63	80
Sep. 3d. Paid Noah Parsons on teacher's wages, on order of J. D. and L. M., trustees (voucher No. 33), .....	21	20	Do. for library,.....	4	18
Sep. 25th. Paid L. M. and P. S., trustees, library money (voucher No. 46), .....	4	18	1857		
Oct. 22d. To copy Code of Public Instruction,.....	1	50	April 2d. Cash of county treasurer for teachers' wages,....	166	60
			Do. for library,.....	8	36
			May 12th. Cash of county treasurer on supplemental apportionment for teachers' wages, .....	2	10
			Do. for library, .....	...	16

The orders and other vouchers of the account of the supervisor going out of office belong to him only in his official character, and should be delivered to his successor, precisely as if he was vacating an official place of business in which such vouchers were by law required to be filed and kept. On turning them over to his successor, the latter should give to his predecessor a receipt which may be substantially in the following form:

Received of John Doe, late supervisor of the town of \_\_\_\_\_, \_\_\_\_\_ dollars and \_\_\_\_\_ cents for balance of school moneys remaining in his hands.

Also, vouchers from No. \_\_\_\_\_ to No. \_\_\_\_\_, both inclusive, in support of his charges for disbursements, bearing the same numbers in his cash account, and amounting in the aggregate to the sum of \_\_\_\_\_ dollars and \_\_\_\_\_ cents.

Also, one (or two or more, as the case may be) bound account book, and one copy Hull's Treatise on Town Officers (or whatever other books, papers or other property are in his custody as supervisor). Dated \_\_\_\_\_

R. ROE, *Supervisor of* \_\_\_\_\_.

The account book should contain an inventory of all books or other property which may from time to time come into the custody of the supervisor in the discharge of his duties as a school officer.

## TITLE V.

## OF THE DUTIES OF THE TOWN CLERK UNDER THIS ACT.

SECTION 1. It shall be the duty of the town clerk of each town :

1. Carefully to keep all books, maps, papers and records of his office touching common schools, and forthwith to report to the supervisor any loss of or injury to any of them which may happen ;

2. To receive from the supervisor the certificates of apportionment of school moneys to the town, and to record them in a book to be kept for that purpose (*See sec. 30, of title 3*) ;

3. Forthwith to notify the trustees of the several school districts and separate neighborhoods of the filing of each such certificate ;

4. To see that the trustees of the school districts and separate neighborhoods make and deposit with him their annual reports within the time prescribed by law, and to deliver them to the school commissioner on demand (*See sec. 60, of title 7*) ; and to furnish the school commissioner of the school commissioner district, in which his town is situated, the names and post-office address to the school district officers reported to him by the district clerks (*See sub. 5, of sec. 37, of title 7*) ;

5. To distribute to the trustees of the school districts and separate neighborhoods all blanks and circulars which shall be delivered or forwarded to him by the State Superintendent or school commissioner for that purpose ;

6. To receive from the supervisor, and record in a book kept for that purpose, the annual account of the receipts and disbursements of school moneys required to be submitted to the town auditors, together with the action of the town auditors thereon, and to send a copy of the account and of the action thereon, by mail, to the Superintendent of Public Instruction, whenever required by him, and to file and preserve the vouchers accompanying the account (*See sub. 5, of sec. 6, of title 4*) ;

7. To receive and to record, in the same book, the supervisor's final account of the school moneys received and disbursed by him, and deliver a copy thereof to such supervisor's successor in office (*See sub. 6, of sec. 6, of title 4*) ;

8. To receive from the outgoing supervisor, and file and record in the same book, the county treasurer's certificate that his suc-



cessor's bond has been given and approved (*See sub. 8, of sec. 6, of title 4*) ;

9. To receive, file and record the descriptions of the school districts and neighborhoods, and all papers and proceedings delivered to him by the school commissioner pursuant to the next title of this act ;

10. To act, when thereto legally required, in the erection or alteration of a school district, as in the next title of this act provided (*See sub. 4, of sec. 1, of title 6*) ;

11. To receive and preserve the books, papers and records of any dissolved school district, which shall be ordered, as hereinafter provided, to be deposited in his office ;

12. To perform any other duty which may be devolved upon him by this act, or by any other act touching common schools.

§ 2. The necessary expenses and disbursements of the town clerk, in the performance of said duties, are a town charge, and shall be audited and paid as such.

The duties imposed upon town clerks are important, and upon their prompt performance depends, in a great degree, the efficiency of the school system.

The maps, papers, books and records relating to schools and the school districts should be carefully kept and preserved ; and, in order to do this, all papers should be properly folded and filed, and tied in convenient packages. When any paper is received which is by law required to be recorded in a book, the recording should not be postponed, but should be done immediately, and the paper immediately indorsed, filed and laid away safely in its appropriate place.

He is required to report to the supervisor any loss or injury of the papers and records in his charge, in order that losses may be replaced and injuries repaired.

It is presumed that the provisions of the first three subdivisions are very generally and faithfully observed.

Section 60 of title 7 requires the trustees to deposit their annual reports with the town clerk, between the first and second Tuesdays of October in each year. They should be made by the outgoing trustee as soon as September 30, and deposited with the town clerk previous to the annual school meeting. If this is not done, the town clerk should, by letter, admonish the trustees of their duty, and obtain from them the reports without delay.

The town clerk should examine every report as soon as it comes into his hands, and if possible in the presence of the trustee delivering it, in order that any mistakes may be detected and corrected at once, or that the trustee may retain it for correction. If, however, necessity requires the report to be returned to the trustees, all mistakes and errors should be pointed out, and particular

instructions given as to the manner of correcting each, and a day should be appointed for the return of the report to the town clerk.

On the blanks for reports will be found a blank certificate of filing, which should be filled and signed at the date of filing.<sup>1</sup>

The attention of town clerks is particularly called to the importance of collecting and correcting the reports of trustees within the time limited by the law. It will be remembered that from these reports the school commissioner must, without delay, make his own report to the Superintendent, embracing therein every one of them. From the reports of the commissioners the Superintendent must collate, arrange and digest all the facts, and present the results to the Governor at a day so early that he may be able to weigh them carefully, and incorporate a statement thereof, with such recommendations as he may deem proper, in his annual message to the Legislature. The Superintendent must also have ample time to prepare his own report to the Legislature, with all the accompanying tables, and carefully to prepare the items upon which he must make the annual apportionment of school moneys.

The town clerk should obtain a report from the trustees of every district, even though a district school, taught by a duly qualified teacher, may not have been maintained during the time required by law, or even for a single day. The school commissioner should be made acquainted with all the facts.

It is suggested that the clerk should have a safe place in which to deposit the reports, and that each should be filed and deposited therein at the moment of its acceptance at his office.

Subdivision 5 of section 37 of title 7 requires that each district clerk shall "report to the town clerk of the town in which the school-house of his district is situated, the names and post-office address" of all district officers. By subdivision 4 of the first section of title 5, each town clerk is required to furnish the school commissioner with a like list of the school officers for every district in his town. It is hoped that the importance of this requirement is fully appreciated, and that the duties enjoined are faithfully and punctually performed.

Subdivision 5 relates to the distribution of blanks, circulars and other school documents by town clerks. Section 2 provides that "the necessary expenses and disbursements of the town clerk, in the performance of said duties, are a town charge, and shall be audited and paid as such." In view of this last provision, it is earnestly requested that, on the receipt of any blanks, circulars or other school documents, forwarded to town clerks, they will immediately deliver them, or cause them to be delivered, to the trustees of the respective districts.

In every case where any order annulling or dissolving any school district, or altering its boundaries or changing its number, is received, such order should be promptly recorded in full among the permanent records of the town.

It is believed that town clerks are, in some instances, negligent in the performance of the duties enjoined by subdivisions 6, 7, 8 and 9 of section 1 of title 5, so far as relates to the record which they are required to make. These duties are important; and no matter of record should be delayed *for a single*

day. This neglect gives rise to numerous appeals to the department, and much vexatious litigation in the courts, causing great expense to the people, and seriously disturbing the peace, and in many cases ruining for years the schools of the districts affected thereby. In view of these consequences the necessity of attending with promptness to all matters of permanent record cannot be too strongly urged upon town clerks.

## TITLE VI.

### OF THE FORMATION, DISSOLUTION AND ALTERATION OF SCHOOL DISTRICTS AND SEPARATE NEIGHBORHOODS.

SECTION 1. It shall be the duty of each school commissioner, in respect to the territory within his district :

1. To divide it, so far as practicable, into a convenient number of school districts, and alter the same as herein provided ;

2. In conjunction with the commissioner or commissioners of an adjoining school commissioner district or districts, to set off joint districts composed of adjoining parts of their respective districts ;

3. To set off by itself any neighborhood adjoining any other State of the Union, where it shall be found most convenient for the inhabitants to send their children to a school in such adjoining State ;

4. To describe and number the school districts, and joint districts, and to deliver, in writing, to the town clerk, the description and number of each district lying in whole or in part in his town, together with all notices, consents and proceedings relating to the formation or alteration thereof, immediately after such formation or alteration. Every joint district shall bear the same number in every school commissioner district of whose territory it is in part composed ;

5. To deliver to the town clerk of the town in which it lies, in whole or in part, a description of each such separate neighborhood.

This section, so far as it concerns the formation and alteration of districts, relates only to such districts as are formed of territory lying wholly within the jurisdiction of the school commissioner acting under it, and the formation or alteration of which, moreover, does not affect any other district which is wholly or partly in the commissioner district or section of another school commissioner.

If the district to be formed, altered or regulated includes a part of a town under the jurisdiction of another commissioner, or involves the division of a joint district, any part of which lies within such other jurisdiction, it is necessary that all the school commissioners should unite as a board in making the order for such alteration.

The case is now exceedingly rare in which a new district can be formed, or any district be altered, without its necessarily involving an alteration of some other district, and thus rendering it necessary to procure the assent of trustees, or to suspend the operation of the order, as provided in section 3 of this title.

Where, in pursuance of the provisions of subdivision 1, of section 13, title 2 of this act, it becomes the duty of the commissioner to cause an amended record of the boundaries of a school district to be made, he should establish the district lines as they were before, according to the best evidence he can obtain, and his order in the matter will not be considered as an *alteration* of the district boundaries. His order should recite the fact that no alteration of district boundaries is intended to be made, but that a defective record is to be amended, under the provisions of the section and title above quoted. This order should be filed in the town clerk's office, and notice thereof should be given by the commissioner to the trustees of the affected district. The previous consent of trustees is not necessary.

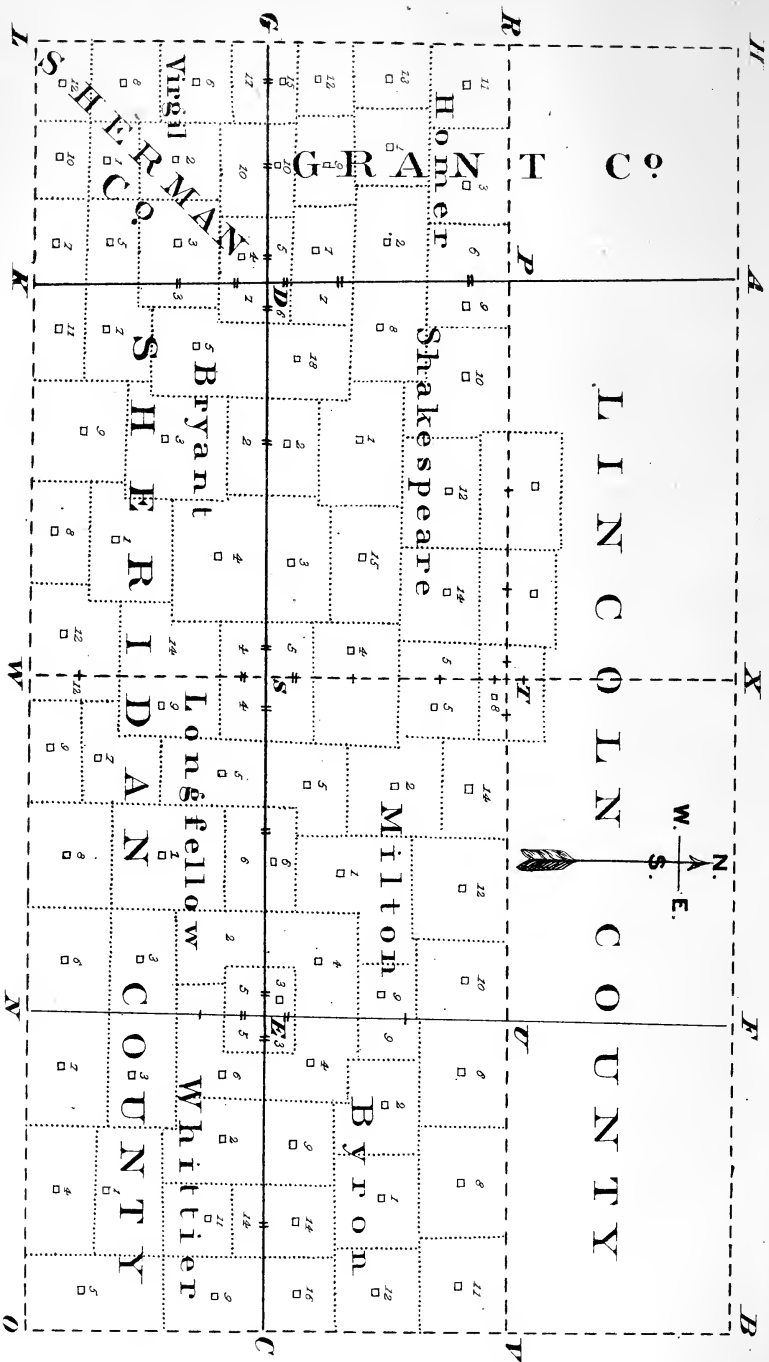
It is of extreme importance that the description of a district should be so complete and definite that a surveyor, at any future day, may be able to run its boundaries without reference to any other document than the order forming, altering or describing it. For this purpose the exterior lines should be defined by reference to natural monuments, marked trees, creeks, etc., or to township lines of historical notoriety, such as the lines of the great original subdivisions into lots, or the course of highways. Where these fail, the courses and distances as ascertained by the compass and chain should be given. The practice of stating the boundary as that of "the farm now in the occupation of C. D.," or by means of similar designations, frequently renders it very difficult to ascertain them, as the occupation of land is continually shifting. In *Grey v. Sheldon*, 8th Verm. R., 402, a resolution "to set off Isaac Grey, Jr., to school district No. 3," was held void on the ground that school districts should be defined by geographical limits, and be made to consist of *territory* and not of *persons*.

The form of an order forming or altering a district may be as follows:

In the matter of the formation of District No. \_\_\_\_\_, in the town of \_\_\_\_\_, county of \_\_\_\_\_, and the consequent alteration of Districts No. \_\_\_\_\_ in said town, and No. \_\_\_\_\_ in the town of \_\_\_\_\_

It is hereby ordered, by the undersigned school commissioner for Commissioner District No. 3, of the county of \_\_\_\_\_, that a new school district be formed, to consist of part of District No. \_\_\_\_\_, in the town of M., and part of District No. \_\_\_\_\_, in the town of P., which new district is hereby numbered [23], and is





bounded as follows: Beginning on the east bank of Allen's creek, at the point where the same is intersected by the north line of the highway leading from Brighton to Pittsford; thence northeasterly along said creek to its junction with Irondequoit creek; thence southeasterly along Irondequoit creek to the west line of the town of Brighton; thence south along the boundary line between the towns of Brighton and Penfield to the north line of Pittsford; thence west on said north line to the State road; thence north along the State road to its intersection with the highway first above mentioned; thence northwesterly along said highway to the place of beginning.

During the year 1867 the school commissioners, by direction of the department, examined into the numbering of all the school districts in the State. Mistakes were corrected, and every district in each town numbered in consecutive order from number one to the highest number in the town. Care was taken that a district lying partly in two or more towns should have but one and the same number in the several towns. Previously some districts had two or more numbers; a district lying in two or more towns had a different number in each town; and in some cases two districts had the same number. The result was confusion and error in the reports, and in the apportionment of money. The records in the department show the number and the geographical position of every district in the State. Hereafter the commissioners will promptly communicate to the department every alteration of districts, whereby a new district is formed, or two or more are consolidated, or one is dissolved and its territory annexed to other districts; and also what new number is given to any new, or consolidated district, and what changes have been made in the numbers in any town—and thus one principal and fruitful source of error and confusion will be closed.

The manner in which the joint districts were ascertained and renumbered will be seen in the following extract from a circular to school commissioners, issued in 1866. This extract is inserted here in order to preserve in a permanent form the "instructions" then given, and as an example and guide for the future, should it ever be necessary to review the whole, or any part of the work.

The various kinds of joint districts which may exist are shown in the accompanying diagram.

In the diagram the *heavy continuous lines* represent boundary lines between different counties; the *light continuous lines*, boundary lines between commissioner districts in the same county; the *coarsely broken lines*, boundary lines between towns lying in the same commissioner district; the *dotted lines*, boundaries of school districts. Portions of school district boundaries are also, in some cases, represented by the other kinds of lines. In all cases where a school district extends across the boundary line between two towns, that fact is shown by a short, straight line placed on such town boundary line at right angles with it. In case of a joint district, two such lines are so placed on every town boundary line which separates different portions of the district.

We will, for convenience, assume, arbitrarily, names for the different portions of territory represented by the diagram.

Let A B C D represent a portion of Lincoln county,

A D G H " " Grant "

D G L K " " Sherman "

and C D K O " " Sheridan "

Let A D E F represent a portion of Lincoln county, lying in the first commissioner district, and B C E F a portion lying in the second commissioner district. Let D E N K represent a portion of Sheridan county lying in the first commissioner district, and C E N O a portion lying in the second commissioner district.

Let D G R P represent the town of Homer,

D G L K " " Virgil,

D P T S " " Shakespeare,

E S T U " " Milton,

C E U V " " Byron,

D K W S " " Bryant,

E N W S " " Longfellow,

and C E N O " " Whittier

The small square, placed within the bounds of each district, represents the location of the school-house; and the number placed near it is the number by which the district is now known in that town. In some cases, where the district lies partly in two or more towns, there is a number standing in the part in each town, showing by what number the district is known in each town. These numbers are not, in all the instances, the same for all the parts of the same district.

DEFINITION.—A *joint school district* is a school district which *lies partly in two or more counties*.

REMARK 1. Though a school district lie partly in two or more towns, or two or more commissioner districts, still it is not a *joint* district unless it lie partly in *two or more counties*.

REMARK 2. Every district which is *not joint* is to be reported *as a whole*. For each *such* district only *one* annual report is to be made each year by the trustees. Such report must always be made to the school commissioner in whose commissioner district the school-house is situated, and must be deposited with the town clerk of the town in which the school-house is situated.

REMARK 3. *Joint school districts* are numbered in two or more towns, in order that those school commissioners who make the annual apportionment of school moneys may receive, from the trustees, reports embracing the facts which form the bases on which such apportionment is made.

The trustees of every *joint district* must make an annual report to the commissioner in whose commissioner district the school-house stands, embracing the *finances* of the *entire district* and also the *statistics* for all *that part* of the district *lying in the county in which the school-house is situated*. This report must be deposited by the trustees with the town clerk of the town in which the school-house is located. They must also make out a *statistical* report for *every part* of the *district* which lies in any town in any county other than the one in which the school-



house stands, and deposit it with the town clerk of the town in which such part of the district lies, for the commissioner in whose commissioner district such town is situated.

Now, what district numbers, in the diagram, shall be dropped as useless? What numbers shall be changed? And how shall they be changed?

You should *strictly observe* the following simple

#### PRINCIPLES.

1. Every school district which is not a *joint district* must be numbered *only* in the town in which the school-house is located.

2. Every *joint school district* must be numbered, in the county in which the school-house is located, in that town *only* in which the school-house is located. It must be numbered, *also*, in every town, in any other county, in which any part of it lies.

3. Every *joint school district* must have the same number in every town where it is numbered.

INFERENCE.—The highest number to be given to any district in any town, will be equal to the number of districts and (parts of) joint districts which are to be numbered in that town.

SPECIAL REMARK.—Joint districts should not be designated by the largest district numbers for the town, but, on the contrary, with the smaller numbers in cases where this can be done without unnecessary inconvenience, for the evident reason that, in case any commissioner should subsequently annul a district, or consolidate two or more districts, thus leaving a break in the district numbers, he could not take the district having the highest number in that town, and change its number so as to fill the break or vacancy, if it were a *joint district*, without the consent of the other commissioners. Should the other commissioner consent, he would thus place himself under the necessity of changing the number of still another district in his town. This difficulty cannot arise if the higher numbers are not assigned to joint districts.

#### HOMER, IN GRANT COUNTY.

We will first examine the town of Homer, in connection with the towns of Shakespeare in Lincoln county, Bryant in Sheridan county, and Virgil in Sherman county, with which it stands associated.

In the south-east corner of Homer is a part of a joint district. The district lies partly in four towns which are in four counties. Hence the district must be numbered in each town. The number must be the same for all the towns. There are not less than 12 districts and parts of joint districts, which are to have numbers, in any one of the four towns. Hence the number to be assigned to this district *may be any number not exceeding 12*. The district is now numbered 4 in the town of Virgil, in which the school-house stands; and since neither Virgil nor Homer has any other number 4, we will assign 4 as its number in all of the towns, and drop the numbers 5 in Shakespeare, 6 in Homer and 7 in Bryant. (See third principle.)

In the north-west corner of Shakespeare is a joint district lying partly in Homer. It is numbered 9 in Shakespeare, and 6 in Homer. The district must have the same number in both towns, since the towns lie in different counties. (See third principle.)

There is no other number 9 in Shakespeare, and there are more than 9 districts and parts of joint districts, to be numbered, in either town, therefore we will call this district number 9 in both towns.

In the south-west corner of Homer is a joint district numbered 15 in Homer and 17 in Virgil. There are not as many as 15 districts and parts of joint districts to be numbered in Homer. Hence, in accordance with the *inference* under the third principle, we will drop both these numbers, 15 and 17, and give the district a *new* number.

There are only 12 districts and parts of joint districts, which are to be numbered, in the town of Homer, and the same number in Virgil; hence, the number to be assigned to this district must not exceed 12, according to said "inference." Since we have already changed joint district number 5, in the south-east corner of Homer, to number 4, there is no number 5 remaining in Homer. We will therefore call this joint district, now numbered 15 in Homer and 17 in Virgil, number 5 in both towns. (Principle 3.)

Number 10 in Homer is joint, and bears the same number in Virgil. There is no other number 10 in Homer, hence we will retain this as its number in both towns.

Number 7 in Homer is joint, and bears the same number in both Homer and Shakespeare. There is no other number 7 in either town, and there are more than 7 districts and parts of joint districts to be numbered in either town. Hence we will retain 7 as the number of this district in both towns.

We will now arrange, according to magnitude, the old district numbers in the town of Homer, placing them on a horizontal line. Remembering that the numbers are, after change, to be consecutive, commencing with 1 and continuing without break or duplication, and that we are to have only 12 numbers, we will proceed to change these old numbers and write the new numbers, for which they are changed, under them, *respectively*, on a second horizontal line. On a third line we will write the new numbers, which we place on the second line, arranged according to magnitude, designating the joint districts by "*jt.*"

Old Nos., . . . .	1, 2, 3, 5 jt., 6 jt., 7 jt., 9,	10 jt., 11,	12,	13, 15 jt.
New Nos., . . . .	1, 2, 3, 4 jt., 9 jt., 7 jt., 8,	10 jt., 11,	12,	6, 5 jt.
Re-arranged, .	1, 2, 3, 4 jt., 5 jt., 6,	7 jt., 8,	9 jt., 10 jt., 11, 12.	

#### VIRGIL, IN SHERMAN COUNTY.

The parts of *joint districts* in this town have all been considered, except No. 3, which lies partly in the town of Bryant, Sheridan county. There being no other No. 3 in Virgil, we will assign 3 as the number of this district, in both said towns.

We will arrange the old numbers on a horizontal line, and the new numbers, for which they are changed, under them, *respectively*, on a second line;

and, on a third line, the new numbers, re-arranged according to magnitude, as in case of Homer:

Old Nos.,..... 1, 2, 3 jt., 4 jt., 5,      6, 7, 8, 10, 10 jt., 12, 17 jt.  
 New Nos.,..... 1, 2, 3 jt., 4 jt., 9,      6, 7, 8, 11, 10 jt., 12, 5 jt.  
 Re-arranged, ..... 1, 2, 3 jt., 4 jt., 5 jt., 6, 7, 8, 9, 10 jt., 11, 12.

No. 17 joint was changed to 5 joint since we had already assigned 5 as the district number to this district in Homer, and, by the third principle, the district must have the same number in both towns.

## SHAKESPEARE, IN LINCOLN COUNTY.

There are two districts lying partly in the northern part of Shakespeare, and partly in another town north of it; also a district in the north-east corner, lying partly in Shakespeare and Milton, and partly in the two towns north of them; also in the eastern part, a district numbered 5, lying partly in Shakespeare and partly in Milton. All these towns lie in the same county; hence no one of these districts is *joint*, and, consequently, according to the first principle, each must be numbered *only* in the town where its school-house is located. None of them will be numbered in Shakespeare. No. 4, in the eastern part of the town, is not a *joint district*, and hence will be numbered in Shakespeare *only*, since the school-house stands in that town.

No. 5, in the south-east corner, is *joint*. The financial report of the entire district will be filed in the office of the town clerk of Shakespeare, for the school commissioner of the first commissioner district of Lincoln county. All that part of the district which lies in Lincoln county, though situated partly in two towns, must be reported *statistically in one report*, and the report must be deposited with the town clerk of Shakespeare, since the school-house stands in that town. Hence it will be re-numbered in Shakespeare, but *not* in Milton. It must be numbered also in Bryant, and in the town of Longfellow, in Sheridan county, since a statistical report for the part lying in each of said two towns must be deposited with the clerk of the town in which such part lies, for the commissioner of the first commissioner district of Sheridan county. There being now no other No. 5 in Shakespeare, and the school-house standing in that town, we will call the district No. 5 in each of the three towns named.

No. 2, in the southern part of the town, is a *joint district*.

We will now arrange, change, and then re-arrange the district numbers, as in case of Homer and Virgil.

Old Nos.,... 1, 2 jt., 3, 4,      5,      5 jt., 6 jt., 7 jt., 8,      9 jt., 10, 12, 14, 15, 18.  
 New Nos.,... 1, 2 jt., 3, 6,      0,      5 jt., 4 jt., 7 jt., 8,      9 jt., 10, 12, 14, 13, 11.  
 Re-arranged, 1, 2 jt., 3, 4 jt., 5 jt., 6,      7 jt., 8,      9 jt., 10,      11, 12, 13, 14.

## BRYANT, IN SHERIDAN COUNTY.

No. 14, in the eastern part of this town, lies partly in the town of Longfellow, and is *not joint*. The 14 should be dropped (according to the first principle), and the district numbered *only* in the town of Longfellow, in which the school-house stands.

Old Nos.,.....	1, 2 jt., 3,	3 jt., 4,	4 jt., 5,	7, 7 jt.,	8,	9, 11, 12, 14.
New Nos.,.....	1, 2 jt., 6,	3 jt., 7,	5 jt., 10, 13,	4 jt.,	8,	9, 11, 12, 0.
Re-arranged, .....	1, 2 jt., 3 jt.,	4 jt., 5 jt.,	6,	7,	8, 9,	10, 11, 12, 13.

## MILTON, IN LINCOLN COUNTY.

No. 9, in the eastern part of this town, lies partly in Milton and partly in Byron. Both towns being in Lincoln county, the district is *not joint*. It should be numbered in Milton *only*. The 9 applied to it in Byron should be dropped. No. 6, in the southern part of this town, is *joint*, and should have the same number in both Milton and Longfellow.

No. 3, in the south-east part of the town, is *joint*, lying partly in each of the towns of Milton and Byron, in Lincoln county, and partly in each of the towns of Longfellow and Whittier, in Sheridan county.. According to the second principle, this district should not be numbered in Byron, but the 3 in *that town* should be dropped.

The *financial* report for the entire district, and the *statistical* report for *that part* of the district lying in Lincoln county, must be made to the commissioner of the first commissioner district of Lincoln county, and deposited with the town clerk of Milton, since the school-house is in Lincoln county, in the town of Milton, in the first commissioner district. The district must be numbered *also*, according to the second principle, in Sheridan county, in each of the towns of Longfellow and Whittier. A statistical report of that part of the district lying in Longfellow must be made to the commissioner of the first commissioner district of Sheridan county, and deposited with the town clerk of Longfellow, and a statistical report of that part lying in Whittier must be made to the commissioner of the second commissioner district of Sheridan county, and deposited with the town clerk of Whittier. There is no other No. 3 in Milton, and the school-house being in that town, we will assign 3 as the number of this district in each of the three towns.

Old Nos., .....	1, 2, 3 jt., 4,	5 in S. part,	5 in W. part,	6 jt.,	8, 9, 10, 12, 14.
New Nos., .....	1, 2, 3 jt., 4, 5,		7,	6 jt.,	8, 9, 10, 12, 11.
Re-arranged, .....	1, 2, 3 jt., 4, 5,		6 jt.,	7,	8, 9, 10, 11, 12.

## LONGFELLOW, IN SHERIDAN COUNTY.

District No. 6, in the town of Whittier, lies partly in Longfellow, but, not being a joint district, must not be numbered in Longfellow. (See first principle.)

Old Nos., 1, 2, 3,	4 jt., 5,	5 jt., 6, 6 jt.,	7, 8,	9 in W. pt.,	9 in S.W. pt. 12.
New Nos., 1, 2, 4,	5 jt., 10,	3 jt., 11, 6 jt.,	7, 8, 9,	12,	0.
Re-arr'd., 1, 2, 3, jt., 4,	5 jt., 6 jt.,	7, 8,	9, 10, 11,	12.	

## BYRON, IN LINCOLN COUNTY.

District No. 14, lying partly in this town, and partly in Whittier, in Sheridan county, is *joint*, according to the second principle, and should be numbered in both towns.

Old Nos.,....	1, 2, 3 jt., 4, 6,	8, 9 in S. part,	9 in W. part,	11, 12, 14 jt.,	16.
New Nos.,....	1, 2, 0,	4, 6,	8, 9,	0	10, 7, 5 jt., 3
Re-arranged, 1, 2, 3,	4, 5 jt.,	6, 7, 8, 9, 10.			

## WHITTIER, IN SHERIDAN COUNTY.

Old Nos.,..... 1, 2, 3,    4, 5,    5 jt., 6, 7, 9, 11, 14 jt.  
 New Nos.,..... 1, 2, 8,    4, 10,    3 jt., 6, 7, 9, 11, 5 jt.  
 Re-arranged, ..... 1, 2, 3 jt., 4, 5 jt., 6,    7, 8, 9, 10, 11.

The orders changing the district numbers may be in the following forms:

## FOR DISTRICTS NOT JOINT.

It is hereby ordered by \_\_\_\_\_, school commissioner of the first commissioner district of Lincoln county, that the school district in the town of Shakespeare heretofore known as District No. 4, of said town (also commonly known as the "Hill District"), shall be hereafter known and designated as District No. 6 of said town of Shakespeare.

Dated August 13, 1866.

*School Commissioner, First District, Lincoln County.*

## FOR JOINT DISTRICTS.

It is hereby ordered by \_\_\_\_\_, school commissioner of the second commissioner district of Lincoln county, and \_\_\_\_\_, school commissioner of the second commissioner district of Sheridan county, that the joint school district lying partly in each of the towns, Byron, in Lincoln county, and Whittier, in Sheridan county (the school-house of which is situated in said town of Byron), and heretofore known as School District No. 14, in each of said towns (also commonly known as the "Valley District"), shall hereafter be known and designated as Joint School District No. 5, in each of said town of Byron and Whittier.

Dated August 13, 1866.

*School Commissioner, Second District, Lincoln County.*

*School Commissioner, Second District, Sheridan County.*

Do not fail in any instance to serve a copy of the order on the district clerk, with a written request that he record the same in the district book, and also give public notice thereof to the inhabitants at the first annual or special district meeting held thereafter. Deposit the original order with the town clerk of the town in which the school-house is situated, and also a copy with the town clerk of every other town in which any part of the district lies, with the written request, in each case, that the order be copied into the town records.

§ 2. With the written consent of the trustees of all the districts to be affected thereby, he may, by order, alter any school district within his jurisdiction, and fix, by said order, a day when the alteration shall take effect.

In case the order is made with the consent of the trustees of the districts affected thereby, or of any such districts, the evidence of such consent should be annexed to the order in substantially the following form :

At a meeting of the trustees of district No. , in the town of , county of , called for the purpose of considering certain proposed alterations thereof, held on the day of , at which were present J. D. and R. S., and in the absence of P. T., a trustee, who, having been duly notified of such meeting, failed to attend, it was

*Resolved*, That the consent of the trustees of district No. , in the town of , be and hereby is given to the alteration of said district by an order bearing date , made by , school commissioner for the Commissioner district (or section) of county (or that said district be so altered as to be hereafter bounded as follows, describing the new boundaries fully).

In witness whereof the undersigned, a majority of the said trustees, have hereunto subscribed our hands this day of .

J. D., }  
R. S. } *Trustees.*

The consent of the trustees must be absolute, not conditional.

§ 3. If the trustees of any such district refuse to consent, he may make and file with the town clerk his order making the alteration, but reciting the refusal, and directing that the order shall not take effect, as to the dissenting district or districts, until a day therein to be named, and not less than three months after the notice in the next section mentioned.

In case a majority of the trustees of any district affected by the order refuse their consent, the order should recite that fact, and that it will not take effect until after three months' notice, in writing, to some one or more of such trustees, as follows :

"The trustees of district No. not having consented to this order, the same will not take effect, *in respect to such last mentioned district*, until after three months' notice, in writing, shall be given to some one or more of such trustees."

§ 4. Within ten days after making and filing such order, he shall give at least a week's notice, in writing, to one or more of the assenting and dissenting trustees of any district or districts to be affected by the proposed alterations, that at a specified time and at a named place within the town in which either of the districts to be affected lies, he will hear the objections to the alteration. The trustees of any district to be affected by such order may

request the supervisor and town clerk of the town or towns within which such district or districts shall wholly or partly lie, to be associated with the commissioner. At the time and place mentioned in the notice, the commissioner or the commissioners, with the supervisors and town clerks, if they shall attend and act, shall hear and decide the matter; and the decision shall be final, unless duly appealed from. Such decision must either confirm or vacate the order of the commissioner, and must be filed with and recorded by the town clerk of the town or towns in which the district or districts affected shall lie.

A written admission of the service of such notice, signed by the trustee or trustees on whom it is made, or an affidavit of the service by the person serving the notice, should be annexed to the original order, and filed with it in the town clerk's office, so that the entire history of the transaction and the date at which the order took effect may be ascertained at any subsequent time without inquiry elsewhere or the examination of other documents.

All orders making alterations in joint districts must be put on record in all the towns of which such districts constitute a part, even though such alterations do not directly affect persons residing in all the towns in which they are recorded: "Thus, although no inhabitant of Tyrone was taken from (joint) District No. 6 to form No. 8, the order, signed by the commissioners of both towns, should have been recorded in Tyrone, because No. 6 lies partly in that town. It is clear that unless such records are made, the commissioners of one town can never know the boundaries of a joint district without resorting to records in another town, over which they have no control." (*Per Dix, Supt. Com. Schools, Dec., p. 175.*)

This section was originally section 3, chapter 133 of 1843, and was then first enacted upon the substitution of a town superintendent in the place of the former town board of commissioners of common schools. In so important a matter as the alteration of a school district, the Legislature deemed it right that the districts to be affected should have the benefit of the consultation and judgment of a board composed of three persons, whenever, for any reason, they elected to associate them, in preference to trusting their interests to the sole jurisdiction of the town superintendent.

The statute has not prescribed the steps to be taken for convening the supervisor, town clerk and school commissioner to deliberate upon the alteration of a district. The school commissioner cannot call upon the supervisor and clerk to act with him, for the jurisdiction of the latter depends upon an application to them by the trustees of some district to be affected. In order to give them the opportunity to make such application, and that it may be done or the option waived within a reasonable time, the school commissioner, before making any alteration, should serve upon one or more trustees of each district to be affected

thereby a written notice, specifically describing such alteration, in substantially the following form :

To the trustees of District No.      , in the town of      :

Take notice, that I intend on the      day of      next, at      (specifying a convenient place, and a time sufficiently remote to enable the trustees to make application to the supervisor and clerk, and for the latter to be prepared for the meeting), to make an order for the alteration of District No.      , in the town of      , so that its boundaries shall thereafter be as follows, viz. : (Here specify the proposed boundaries of the district, as altered, in the manner recommended under sub. 4, sec. 1, title 6).

You are therefore requested to meet without delay and to adopt a resolution consenting to the above proposed alteration, in which case you will please furnish me, at the time and place above mentioned, with a copy thereof, certified under the hands of a majority of you, *or* to adopt a resolution applying to the supervisor and town clerk of the town (or *towns* if the district is a joint one) of      to be associated with me at the time and place above mentioned in determining upon the propriety of such proposed alteration. In the latter case you will please transmit copies of such resolution, certified under the hands of a majority of you, to the supervisor and town clerk without delay, together with notice of the time and place above stated at which such alteration will be made by me in case of their non-attendance.

The determination of the trustees to associate the supervisor and clerk, like every other official act, should result from the resolution of a majority, adopted at a meeting at which all are present or which the absent one has been duly notified to attend. No jurisdiction is obtained by the supervisor and clerk upon the application of less than a majority. Their want of jurisdiction vitiates the action of a board in which they may assume to take part. Upon this point the language of Vice-Chancellor Sandford (2 *Sand. Ch. R.*, 229), is very instructive. Discussing the effect of certain proceedings of a church council at which a majority of the trustees were present and in which they unanimously concurred, but in which the minister, elders and deacons also participated, he says: "The trustees in this case are by the charter the select class or body which is to exercise the corporate functions. In order to exercise them, they must *meet as a board*, so that they may hear each other's views, deliberate and then decide. Their separate action, individually, without consultation, although a majority in number should agree upon a certain act, would not be the act of the constituted body of men clothed with the corporate powers. Nor would their action in a meeting of the whole body of corporators, or of another and larger class in which they are but a component part, be a valid corporate act. In thus acting they are not distinguishable from their associates, and their action is united with that of others who have no proper or legal right to join with them in its exercise. All proper responsibility is lost. The result may be the same that it would have been if they had met separately, and it may be different. In the general assemblage, influences may be brought to bear upon



the trustees which in their proper board would be unheeded ; and no one can say with certainty that their vote in the latter event would have been the same."

If the trustees have given the proper notice to the supervisor and clerk, the school commissioner can at the time and place appointed proceed to act in conjunction with either of them, in case the other omits to attend. It is true that the general rule is, when persons are appointed by the law to act as special tribunals of a quasi-judicial character, then both parties are entitled to the presence of all the judges, and to have the benefits of the consultation of each with every other ; all must therefore meet together and consult, but then a majority may decide. In this case, however, though the law authorizes the trustees to apply to the supervisor and clerk, it furnishes no means of compelling their attendance, nor does it even in express terms declare it their duty to attend. It is only that one of them who accepts and acts under the application of the trustees who can be said to be appointed or vested with any power in the premises. Indeed, the doubt is rather whether the *sole* jurisdiction of the school commissioner is divested unless both the supervisor and clerk associate themselves with him. It is clear that they cannot act except in association with him.

If neither attend, the commissioner may proceed to act alone ; for he has the general power, and cannot be deprived of it by a fruitless application to the supervisor and clerk, where the latter decline or omit to be associated with him.

In the case of joint districts, the supervisors and town clerks of all the towns, parts of which are included in the district affected, have, under the practice recognized by the department, been associated with the town superintendents. In this case, the reasoning in favor of proceeding, notwithstanding the absence of some of the supervisors or clerks, or even of both the supervisor and clerk of some of the towns, is stronger than in the case of a whole district.

Under the adjudications of the department, it has been held that each town in such case had but one vote, so that the vote of a superintendent from one town counterbalanced the concurrent vote of the superintendent, supervisor and clerk from another town. As the school commissioner stands in the place of a town superintendent for *each* town within his jurisdiction, no town can be deemed to be unrepresented in consequence of the absence of its clerk and supervisor. The reasoning, however, which regarded the town officers as representatives of their respective towns is inapplicable since the substitution of the school commissioner for town superintendents, and each member of the board must be regarded under the existing law as having equal weight in the decision. In other words, it depends upon the majority of voices.

If, at the time appointed, the commissioner fails to attend, he may give notice specifying another day and place of meeting. But the commissioner cannot postpone the time of meeting to any day later than three months after the first notice. The first order will be void, unless it is confirmed by a second order made by the board thus duly convened and formed, or by the commissioner in the absence of the other officers.

In the case of *Williams v. Larkin* (3 Denio, 114), it was held by the supreme court, where an alteration of school districts made by the proper officers affected three districts, and the trustees of *two* of the districts consented to the alteration, but the trustees of the other district did not consent, that the alteration took effect immediately as to those districts whose trustees consented. In that case a part of District No. 14 was annexed to No. 3 with the consent of the trustees of both districts; the residue of No. 14 was annexed to No. 13 without the consent of the trustees of the latter. Judge Bronson, delivering the opinion of the court, says: "Although both alterations were made at the same time, they were not in their nature inseparable acts, and I see no reason why they might not take effect at different periods." It is obvious that alterations may be so connected and dependent upon each other as to render the principle of this case inapplicable. For example, so much of the order as *annulled* District No. 14 could not take effect until the expiration of three months, notwithstanding its trustees consented, because it was dependent upon the annexation of so much of said district as remained to No. 13. No. 14 was a district lying wholly within one town. According to the opinion of Superintendent Spencer an order for the *dissolution* of a joint district might be valid, although the annexation of its parts to other districts might be void; and consequently its dissolution might take effect immediately, though the annexation of its parts to other districts might be suspended for three months.

While the alteration is inchoate it is wholly inoperative upon the rights of any person. Thus, where an order was made to annex territory to an existing district without the consent of the trustees of the latter, it was held that, before the expiration of the three months after notice, the same territory might be annexed to a third district without the consent of the trustees who had refused the annexation first proposed; but that the assent of the district from which it was taken by the first order was requisite. So, residents upon the territory to be transferred continue to be legal voters, and are entitled to notice of all district meetings held between the making of the order and the time it takes effect, and must be assessed on any tax list made out in the mean time.

§ 5. The supervisor and town clerk shall be entitled each to one dollar and fifty cents a day, for each day's service in any such matter, to be levied and paid as a charge upon their town.

§ 6. Whenever it may become necessary or convenient to form a school district out of parcels of two or more school commissioner districts, the commissioners of such districts, or a majority of them, may form such district; and the commissioners within whose districts any such school district lies, or a majority of them, may alter or dissolve it.

The proceedings under this section would be similar to those under the preceding sections of this title, except that the concurrent action of the school commissioners is required.

§ 7. If a school commissioner, by notice in writing, shall require the attendance of the other commissioner or commissioners, at a joint meeting for the purpose of altering or dissolving such a joint district, and a majority of all the commissioners shall refuse or neglect to attend, the commissioner or commissioners attending, or any one of them, may call a special meeting of such school district, for the purpose of deciding whether or no such district shall be dissolved; and its decision of that question shall be as valid as though made by the commissioners.

This section can become operative only in the rare case where three or more commissioners are requisite for the alteration, as it is only in such case that the *majority* can neglect to attend. If a majority attend, they can act under the preceding section.

If the district meeting elects to dissolve the district (which is the extent of its power), the several parts revert to the towns in which they are respectively included, and become subject to regulation by the school commissioner having jurisdiction therein.

§ 8. When two or more districts shall be consolidated into one, the new district shall succeed to all the rights of property possessed by the annulled districts.

Where two or more districts are consolidated, the united territory forms a new district. It is necessary to elect new trustees and other district officers, and the commissioner should give the notice provided by section 1 of title 7 of this act.

The public money which either district may have in the hands of the supervisor, unexpended, becomes applicable to the payment of teachers' wages and to the library of the consolidated district, without any distinction between the inhabitants or pupils of the former districts. If there is any money due to a teacher of either district, it should be drawn before the consolidation takes effect, or so much of it as is applicable to the payment of wages during the term in which they were earned.

§ 9. When a district is parted into portions, which are annexed to other districts, its property shall be sold by the supervisor of the town within which its school-house is situated, at public auction, after at least five days' notice, by notices posted in three or

more public places of the town in which the school-house is, one of which shall be posted in the district so dissolved. The supervisor, after deducting the expenses of the sale, shall apply its proceeds to the payment of the debts of the district, and apportion the residue, if any, among the taxable inhabitants of the district, in the ratio of their several assessments on the last corrected assessment roll or rolls of the town or towns, and pay it over accordingly.

A district is annulled only when all its parts are annexed to other districts, so that nothing of the original district remains. If any of it remains as a distinct district, although designated by a new name and number, it is not a case of annulling.

In respect to the property to be sold: Property is defined in the Code of Procedure as including lands, tenements and hereditaments, money, goods, chattels, things in action and evidences of debt. The only point upon which much question is likely to arise regards the library of the annulled district. A portion of the books may have been purchased with money voted by the district and raised by tax upon the district. So far as these are concerned, they undoubtedly belong to the district and may be sold when it is annulled. In respect to those which have been purchased by the library money apportioned from the income of the United States deposit fund, the case is different. The money of the *State* was appropriated to the *support of common schools* by furnishing a library, and there is nothing to imply an intention that it should ever be diverted from its public purpose by becoming private property. The trustees of the district are made trustees of the library, but the *property* in it, it is declared, "shall be deemed to be vested in such trustees, *so as to enable them to maintain any action relative to the same.*" The Legislature seem to have designed hereby to confer only a qualified property, for a specific purpose, retaining the general property in the people of the State of New York, precisely as the property of the library of the court of appeals, the Attorney-General, etc., is held.

It is believed, therefore, that the books, so far as they have been purchased from the funds of the State, should be distributed precisely as the money itself would be if it came to the hands of the commissioner for distribution on the day of the annulling of the district; that is, should be assigned to the respective districts to which parts are annexed, in proportion to the number of children between four and twenty-one resident in such parts, according to the last report of the trustees.

The debts must be ascertained from the trustees, and the supervisor should only pay them upon the written order of a majority of the trustees. If debts are claimed which are not admitted by the trustees, the money should be retained until any legal proceeding instituted for their collection is determined.

The last corrected assessment roll is that which was delivered by the assessors to the supervisor to be laid before the board of supervisors. If in the

equalization by the board of supervisors the valuation of real estate has been changed, the roll as thus varied by them is to be followed in distributing the money. But the completion of a new roll by the assessors, and its delivery to the supervisor, supersedes the roll of the preceding year, although the latter has been and the former has not been passed upon by the board of supervisors. (7 *Wend.*, 89.)

In a district, embracing parts of more than one town, where the proportion of taxes to be assessed upon the parts of such districts lying in different towns has been established by the supervisors of such towns, under section 69 of title 7, the proceeds of the sale are to be divided between the parts of the districts in the proportion thus established, and the shares of such parts then apportioned to their respective inhabitants on the last corrected assessment roll of the town in which each part lies.

§ 10. The supervisor of the town within which the school-house of the dissolved district was situate, may demand, sue for, and collect, in his name of office, any money of the district outstanding in the hands of any of its former officers, or any other person; and, after deducting his costs and expenses, shall report the balance to the school commissioner, who shall apportion the same equitably among the districts to which the parts of the dissolved district were annexed, to be by them applied as their district meetings shall determine.

The collector and trustees are the only officers of a district in whose hands there can be legitimately any money; such money may be the proceeds of a tax collected but not expended. In such case, the equitable mode of distribution would be to apportion it to the districts according to the amount which the taxable inhabitants and property set off to each have contributed thereto; the same rule would hold in regard to the proceeds of the sale of school-houses or other property acquired by taxation.

In case, however, the money is applicable to the payment of the current expenses of schools, such as the share of a town fund, the income of a school lot or the districts' proportion of fines for gambling, under chapter 504 of 1851, the equitable rule of apportionment is to assign it to the districts in proportion to the number of pupils resident in the parts annexed to them respectively.

In case it becomes necessary to bring an action against the officers of a joint district, the supervisors of all the towns of which it forms a part must join as plaintiffs in the suit.

It may be doubted whether the supervisor is authorized to maintain an action against any other person than an officer of a district for moneys belonging to it; the statute giving him the power to sue confining it to penalties and forfeitures, and to defaults and omissions by town and district officers; the trustees should in such case bring the action before the order annulling their district takes effect.

§ 11. Though a district be dissolved, it shall continue to exist in law, for the purpose of providing for and paying all its just debts; and to that end the trustees and other officers shall continue in office, and the inhabitants may hold special meetings, elect officers to supply vacancies, and vote taxes; and all other acts necessary to raise money and pay such debts shall be done by the inhabitants and officers of the district.

Though the statute contains no limitation of the time within which the trustees of a dissolved or consolidated district are required to discharge their duties under this section, there can be no valid reason for any longer delay than may be essential to ascertain its outstanding liabilities. The pendency of litigation, in respect to some of them, may put it out of the power of the trustees to act immediately, and their powers doubtless continue so long as any legal liability subsists; the existence of the district is maintained for this special purpose, with power to elect officers to fill vacancies, and to vote taxes, or any other legal act necessary for the single purpose of paying its just debts.

§ 12. The commissioner, or a majority of the commissioners in whose district or districts a dissolved school district was, shall, by his or their order in writing, delivered to the clerk of the district, or to any person in whose possession the books, papers and records of the district, or any of them, may be, direct such clerk or other person to deposit the same in the clerk's office in a town in the order named. Such clerk or other person, by a neglect or refusal to obey the order, shall forfeit fifty dollars, to be applied to the benefit of common schools of said town. The commissioner or commissioners shall file a duplicate of the order with such clerk. (*Sec. 22, of title 3.*)

## TITLE VII.

OF SCHOOL DISTRICT AND NEIGHBORHOOD MEETINGS, AND OF THE CHOICE, DUTIES AND POWERS OF SCHOOL DISTRICT AND NEIGHBORHOOD OFFICERS.

### FIRST ARTICLE.

*Of school district and neighborhood meetings, the voters and their powers generally.*

SECTION 1. Whenever any school district or separate neighborhood shall be formed, the commissioner, or any one or more of the commissioners, within whose district or districts it may be, shall prepare a notice, describing such district or neighborhood, and

appointing a time and place for the first district or neighborhood meeting, and deliver such notice to a taxable inhabitant of the district or neighborhood.

The meeting for organization cannot be held until the district "shall be formed," that is, not until the order for its formation shall have taken effect by the consent of trustees of the districts from which it was formed, the expiration of three months' notice or the decision of an appeal, if one has been brought.

The notice is to describe the district by metes and bounds, so that the inhabitant to whom it is delivered may know, without recourse to any other document, over what territory he is to search for inhabitants. It may be in the following form :

To \_\_\_\_\_, a taxable inhabitant of District No. \_\_\_\_\_ in the town of \_\_\_\_\_ :

WHEREAS, By an order of the school commissioner for the \_\_\_\_\_ commissioner district of the county of \_\_\_\_\_, which order is dated the \_\_\_\_\_ day of \_\_\_\_\_, and took effect on that day (or will take effect on the \_\_\_\_\_ day of \_\_\_\_\_ next, specifying the day, which must precede the day of meeting), a school district is formed, numbered No. \_\_\_\_\_, and bounded and described as follows viz.: Beginning (pursuing the description as in the notes to title 6, *supra*).

You are hereby required to notify every male person of full age, residing in the territory above described and entitled to hold lands within this State, who owns or hires real property subject to taxation for school purposes, and every resident of such territory authorized to vote at town meetings of the town of \_\_\_\_\_ (in the case of a joint district, say, either of the towns of \_\_\_\_\_ or \_\_\_\_\_) who owns any personal property, liable to be taxed for school purposes in such territory, exceeding fifty dollars in value exclusive of such as is exempt from execution, or who has permanently residing with him a child or children of school age, some one or more of whom shall have attended the common school for a period of at least eight weeks during the year preceding, that the first district meeting of said district is hereby appointed to be held at the house of \_\_\_\_\_, at \_\_\_\_\_ o'clock in the afternoon of the \_\_\_\_\_ day of \_\_\_\_\_ next, for the purpose of electing officers, voting taxes, and performing such other business as is permitted by section 16, of title 7, of the general school act.

You are required by law to read this notice in the hearing of each inhabitant qualified as above described, or, in case of his absence from home, to leave a copy of so much thereof as relates to the time and place of such meeting at the place of his abode, at least six days before the time of the meeting. Dated this \_\_\_\_\_ day of \_\_\_\_\_

A. B.,

*School Commissioner.*

It is not claimed to be absolutely essential that the notice should be in the form above recommended. It is essential that the time of day and the place of meeting should be accurately specified. (16 *Verm.*, 444.) It is eminently desirable that the notice should be so broad that no person hearing it should have the slightest ground for professing to be surprised at any business which can by possibility be presented at the meeting. This is a rule that is applicable to all notices for all meetings. At the same time, it is expedient that the earliest occasion should be taken to apprise the inhabitants of the extent of the powers of a district meeting, and how little they are limited by the terms of the notice. A meeting lawfully assembled for one object is competent to act upon others which were not in the contemplation of those who procured it to be called, and may do almost any thing except change the site of the school-house, or any act not otherwise ordered or forbidden by statute. It is true that, though the proceedings of a meeting may be entirely regular and legal, it is within the equitable powers of the State Superintendent, upon an appeal, to set them aside where it can be shown that there was a fraudulent design to frame the notice in such a manner as to conceal the real purpose for which the meeting was convened. But it is not to be forgotten that the object of the notice is merely to assemble the inhabitants as the local legislature, and that when so assembled their powers are defined, not by the notice but by the statute. Indeed it would follow, from the general principles which have been applied by the courts to elections and other corporate acts, that "if *all* were present, though *by accident* and *without notice*, their acts would be good." (*King v. Theoderic*, 8 *East.*, 543; see also 11 *Wend.*, 604.) In reference to an annual meeting, the supreme court (6 *Hill*, 647) say: "For greater caution, and to give greater publicity to the meeting, the statute directs the clerk to post notice of it; but that is not essential to its validity. The time and place for holding it may always be ascertained by examining the clerk's records, and an objection that notice was not duly posted should never be allowed to prevail. The foundation of the meeting is the order of a previous annual meeting, not the posting of a notice by the clerk. The former is indispensable, but not the latter."

§ 2. It shall be the duty of such inhabitant to notify every other inhabitant of the district or neighborhood, qualified to vote at the meeting, by reading the notice in his hearing, or, in case of his absence from home, by leaving a copy thereof, or so much thereof as relates to the time, place and object of the meeting, at the place of his abode, at least six days before the time of the meeting.

In computing statute time, the first day, or the day on which the time begins to run, is to be excluded. (10 *Barb.*, 117.) The notice under this section must be six full days, exclusive of the day of service, and must therefore be given as early as the seventh day before the meeting.

It is always important that the persons on whom and the manner in which the notice has been served should be verified by proper evidence, which can be



preserved. In reference to a similar notice under the school law of Massachusetts, the supreme court of that State says: "When the selectmen direct a warrant for calling a school district meeting to a proper person, he is made a returning officer for that occasion. All returning officers are ministerial, and are bound to set forth in their returns all the acts done by them, that the proper tribunal may judge of their sufficiency. They are not competent to judge of the legality of a notice or service; and a return that a precept had been *legally* served, or that the duty enjoined by a warrant had been *duly* performed, would most clearly be insufficient." To obviate this objection it would be well for the inhabitant who gives notice of the meeting to frame his return in substantially the following manner:

"Pursuant to the within notice, I have notified the inhabitants qualified and residing as therein described, at least six days before the time of the meeting, in the following manner, viz.: by reading the notice in their hearing—John Doe, Charles Davis, etc. (naming them in full); by leaving a copy of so much of the within as relates to the time and place of meeting at their respective places of abode, they being absent from home—Robert Kidd, Henry Hunter, etc., etc."

This return, when indorsed upon the notice and signed by the inhabitant making it, should be produced at the meeting and filed with the records of the district. It constitutes the appropriate evidence of the service of notice; but it is not to be inferred that in its absence secondary evidence may not be received to support the proceedings of the meeting, whose jurisdiction depends upon *facts* and not upon mere evidence.

It is proper to remark that the notice should be given to every inhabitant having any pretension to a right to vote, although the person giving it may deem his qualifications insufficient. Giving him notice determines nothing as to the right; and it is better to err by giving the notice to persons not entitled to vote than to fail to notify any person who may be so legally entitled.

§ 3. In case such meeting shall not be held, and, in the opinion of the commissioner, it shall be necessary to hold such meeting before the time herein fixed for the first annual meeting, he shall deliver another such notice to a taxable inhabitant of the district or neighborhood, who shall serve it as hereinbefore provided.

§ 4. When the clerk and all the trustees of a school district shall have removed from the district, or their office shall be vacant, so that a special meeting cannot be called, as hereinafter provided, the commissioner may in like manner give notice of and call a special district meeting.

§ 5. Every taxable inhabitant to whom a notice of any district meeting shall be delivered for service, pursuant to any provision of this article, who shall refuse or neglect to serve the same, as

hereinbefore prescribed, shall forfeit five dollars for the benefit of the district.

It will be observed that this section imposes a penalty for every refusal to serve a notice for *any* district meeting properly delivered to an inhabitant. It is coextensive with the preceding section. A doubt whether the commissioner is legally entitled to his office will not excuse a refusal, if he be an officer *de facto*, holding under color of election and exercising the duties of the office. It is not for a ministerial officer to judge of the validity of the election of an officer *de facto*; for example, a district clerk should serve a notice signed by persons recognized and acting as trustees, though he deems them to have no title to the office and regards the notice as invalid. (*See 7 Johns., 552.*)

§ 6. A special district meeting shall be held whenever called by the trustees. The notice thereof shall state the purpose for which it is called; and the district clerk, or, if the office be vacant, or he be sick or absent or shall refuse to act, a trustee or some taxable inhabitant, by order of the trustees, shall serve the notice upon each inhabitant of the district qualified to vote at district meetings, at least five days before the day of the meeting, in the manner prescribed in the second section of this title. But the inhabitants of any district may, at any annual meeting, adopt a resolution prescribing some other mode of giving notice of special meetings, which resolution and the mode thereby prescribed shall continue in force until rescinded or modified at some subsequent annual meeting.

See sections two and thirty-seven for comments upon the time and manner of serving notices.

Under this section it is held that a special meeting, duly called and assembled, can transact any business, whether specified in the notice or not; but if the inhabitants proceed to do acts which are not mentioned in the notice, and which amount to a fraud or surprise on the district, the department on appeal will set aside the proceedings.

§ 7. The proceedings of no neighborhood or district meeting, annual or special, shall be held illegal for want of a due notice to all the persons qualified to vote thereat, unless it shall appear that the omission to give such notice was willful and fraudulent.

The provision to cure the defect of notice relates to the mode and extent of service, and not to the insufficiency of the matter contained in the notice itself.

It was intended for cases where through accident or mistake the proper legal notice has not been given to all who are entitled to it; but it cannot be construed to extend to cases in which *no attempt* is made to give the notice required by law to *any* of the inhabitants. Where the clerk of a district undertakes to give a notice in the manner provided by the statute, and has failed, unintentionally, to serve such notice on all the persons entitled to receive it, or where such notice is imperfectly served, the proceedings of the meeting will not be *void* on that account. They may, however, be *set aside* on appeal, on showing sufficient cause. (*Com. School Dec.*, 186, 223.)

§ 8. The annual meeting of each neighborhood shall be held on the second Tuesday of October in each year, at the hour and place fixed by the last previous neighborhood meeting; or, if such hour and place has not been so fixed, then at the hour and place of such last meeting; or, if such place be no longer accessible, then at such other place as the trustees, or, if there be no trustees, the clerk, shall in the notices designate.

§ 9. An annual meeting of each school district shall be held on the second Tuesday of October in each year, and, unless the hour and the place therefor shall have been fixed by the vote of a previous district meeting, the same shall be held in the school-house at seven o'clock in the evening. If a district possess more than one school-house, it shall be held in the one usually employed for that purpose, unless the trustees designate another.

It may happen that while the trustees are building a new school-house, and before it has been accepted, the previous annual meeting may have been held in a room hired for temporary use of the school. This room would be for the time being the school-house, and the place for holding the annual meeting. A vote of the inhabitants may require an annual meeting to be held in some place other than the district school-house.

§ 10. Whenever the time for holding the annual meeting in school districts shall pass without such meeting being held in any district, a special meeting shall thereafter be called by the trustees or by the clerk of such district, for the purpose of transacting the business of the annual meeting; and if no such meeting be called by the trustees or the clerk within twenty days after such time shall have passed, the supervisor or the Superintendent of Public Instruction may order any inhabitant of such district to give notice of such meeting in the manner provided in the second section of this title, and the officers of the district shall make to

such meeting the reports required to be made at the annual meeting, subject to the same penalty in case of neglect; and the officers elected at such meeting shall hold their respective offices only until the next annual meeting and until their successors are elected and shall have qualified as in this act provided.

§ 11. Whenever any district or neighborhood meeting shall be duly called, it shall be the duty of the inhabitants qualified to vote thereat to assemble at the time and place fixed for the meeting.

§ 12. Every male person of full age residing in any neighborhood or school district, and entitled to hold lands in this State, who owns or hires real property in such neighborhood or school district liable to taxation for school purposes, and every resident of such neighborhood or district authorized to vote at town meetings of the town in which he resides, who has permanently residing with him a child or children of school age, some one or more of whom shall have attended the district school for a period of at least eight weeks within one year preceding, or who owns any personal property liable to be taxed for school purposes in any such district, exceeding fifty dollars in value, exclusive of such as is exempt from execution, and no other, shall be entitled to vote at any school meeting held in such neighborhood or district.

The question of residence is one frequently agitated, not only with respect to the right of voting and of holding district offices, but in regard to the enumeration of pupils. The principles which govern its determination have been largely discussed by the courts in construing the words *residence*, *domicile* and *inhabitaney*, which, though not in all respects and for all purposes convertible terms, mean generally the same thing.

Inhabitaney and residence, says Chancellor Walworth (8 *Wend.*, 140), "mean a fixed and permanent abode or dwelling place for the time being, as distinguished from a *mere temporary locality* of existence." To acquire a domicile two things are necessary—the *fact* of residence in a place, and the intent to make it a home. To *retain* a domicile once acquired, actual residence, however, is not indispensable, but it is retained by the mere intention not to change it or adopt another, or rather by the absence of any present intention of removing therefrom. Nor is the domicile affected by the forming of an intention to remove, unless such intention is carried into effect. This results from the rule that a domicile once acquired remains until a new one is acquired. In legal contemplation, every person must have a domicile somewhere, and he can only have one domicile at one and the same time.

In determining the locality of a man's existence, where he divides his hours between different buildings, the place of his dwelling-house is first regarded

in contradistinction to any place of business, trade or occupation. If he has more than one dwelling-house, that in which he sleeps or passes his nights, if it can be distinguished, will govern. If the dwelling-house is partly in one town and partly in another, the occupant must be deemed to dwell in that town in which he habitually sleeps, if it can be ascertained. (23 *Pick.*, 178.)

The Constitution establishes the rule, by section 3, article 2, that "for the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum at public expense; nor while confined in any public prison."

The intention of remaining, requisite to constitute a resident, must be independent of any temporary purpose of business, health or pleasure, though it does not necessarily exclude the idea of removing after an indefinite time, or a change of circumstances. Once established in any place, the presumption of residence continues unless rebutted, and the burden of proof is upon a party alleging a change.

The following is a condensed statement of the rules given by Judge Story (*Conflict of Laws*, chap. 3); most of them are stated and illustrated by our supreme court (4 *Barb.*, 518):

1. The place of birth of a person is considered as his domicile, if it be at the time the domicile of his parents. This is called the domicile of nativity. But if his parents are on a visit or on a journey, the home of the parents will be deemed his domicile. An illegitimate child follows the domicile of his mother;

2. The domicile of birth continues until he has acquired a new domicile;

3. A minor is generally deemed incapable of changing his domicile; but if the parent changes his domicile, that of the minor follows it. If the father dies, his last domicile continues that of his minor children. This rule is subject to qualification if the minor has been emancipated from parental control or adopted into a new family;

4. A married woman follows the domicile of her husband;

5. A widow retains the domicile of her deceased husband until she acquires another;

6. *Prima facie*, the place where a person lives is deemed his domicile;

7. Every person of full age having a right to change his domicile, if he removes to another place with an intention of making it his permanent residence, that immediately becomes his domicile.

8. If a person removes to another place with an intention of remaining there for an indefinite time, and as a place of present domicile, it becomes his domicile notwithstanding he may entertain a floating intention to return at some future period;

9. The place where a married man's family resides is generally deemed his domicile, but not if it be a merely temporary establishment;

10. If a married man has his family in one place and his business in another, the former is deemed his domicile;

11. If a married man has two places of residence at different times of the year, that will be esteemed his domicile which he himself selects or deems his home, or which appears to be the center of his affairs, or where he votes or exercises the rights and duties of a citizen ;

12. If a man is unmarried, that is generally deemed his domicile where he transacts his business, exercises his profession or assumes the privileges or duties of a citizen. But this rule is subject to qualification ;

13. Residence, to produce a change of domicile, must be voluntary, not by imprisonment, etc. ;

14. Mere intention to remove, without the fact of removal, will not change the domicile ; nor will the fact of removal without intention. They must go together ;

15. A domicile, once acquired, remains until a new one is acquired.

Voters must, in the first place, possess three qualifications ; they must in all cases be males, twenty-one years of age, and residents of the district. Possessing these, a man to be entitled to vote must possess also one of the following qualifications, and any one is sufficient :

I. He must be *entitled to hold lands*, and must also own or hire real property in the district subject to taxation ; it matters not how small is the real property or how brief the term for which it is hired ; tenancy from week to week of a shanty or a room is sufficient. But an alien, though he has taken the incipient measures to obtain naturalization, cannot hold real property or be a qualified voter at a school district meeting in the district where he resides, until he has made and filed the affidavit hereinafter mentioned.

He is required to make a deposition or affirmation in writing, before an officer authorized to take the proofs of deeds to be recorded, that he is a resident of and intends always to reside in the United States and to become a citizen thereof as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require to enable him to obtain naturalization : which shall be certified by such officer, and be filed and recorded by the Secretary of State in a book to be kept by him for that purpose, and such certificate, or a certified copy of it, shall be evidence of the facts therein contained.

The real property must be subject to taxation, and it matters not that the person claiming to vote as the owner or hirer of it is not actually taxed for it himself, or that the property is not taxed to the owner or any other person. A man of color may, therefore, be a voter at a district meeting, who *hires* real property of less than \$250 in value, because it is subject to taxation as the property of the *owner* ; although the man of color cannot vote as the owner of real property of less than \$250 in value, because the Constitution (§ 1, *art.* 2) exempts him from taxation unless he possesses a freehold estate of that value. *Query*, however, whether a man of color who *owns* real property, worth say \$200, which he rents to a white man, so that the latter is taxable as occupant, is not entitled to vote at a district meeting.

II. Or he must be *authorized to vote at town meetings of the town in which he resides*, and have permanently residing with him a child or children of school

age, some one or more of whom shall have attended the district school for a period of at least eight weeks within one year preceding.

III. Or he must own personal property liable to taxation exceeding \$50 in value, exclusive of such as is exempt from execution.

In *Crawford v. Wilson*, 4 Hill, 504, the supreme court held in effect that, in estimating the amount of a voter's personal property, a debt due to him from a school district for teachers' wages, and from his father for services, might be taken into account. No unnaturalized alien, no Indian and no man of color, can entitle himself to vote in virtue of his possession of taxable personal property, nor by having children of school age, as above set forth. His claim must be tested by the possession of the right to vote at town meeting, which requires citizenship (which excludes aliens and Indians) for ten days, residence of the State for one year next preceding, and of the county for the last four months, and, in regard to the man of color who is a citizen, the real property qualification also.

The personal property exempt from execution is defined by law as follows :

"When owned by any person being a householder ; and such articles thereof as are movable shall continue so exempt while the family of such person or any of them may be removing from one place of residence to another.

"1. All spinning wheels, weaving looms, and stoves put up or kept for use in any dwelling-house ;

"2. The family Bible, family pictures, and school books used by or in the family of such person ; and books not exceeding in value \$50, which are kept and used as part of the family library ;

"3. A seat or pew occupied by such person or his family in any house or place of public worship ;

"4. All sheep to the number of ten, with their fleeces, and the yarn or cloth manufactured from the same (though not the owner of the sheep on which grew the fleeces from which they are made, 21 Wend., 69), one cow, two swine, the necessary food for them (but not for a team, 5 Denio, 119), all necessary pork, beef, fish, flour and vegetables actually provided for family use (although such vegetables may be in the ground, undug or not fully grown, 25 Wend., 370), and necessary fuel for the use of the family for sixty days ;

"5. All necessary wearing apparel, beds, bedsteads and bedding for such person and his family, arms and accoutrements required by law to be kept by such person, necessary cooking utensils, one table, six chairs, six knives and forks, six plates, six teacups and saucers, one sugar dish, one milk pot, one tea pot and six spoons, one crane and its appendages, one pair of andirons and a shovel and tongs ;

"6. The tools and implements of any mechanic necessary to the carrying on of his trade, not exceeding \$25 in value." (*Sec 22, chap. 6, art. 2, title 5, part 3, of the Revised Statutes.*)

By section 1, chapter 107, Laws of 1858, page 206, the foregoing provision "does not apply to any judgment rendered for any claim accruing for work and labor performed in a family as a domestic."

Chapter 782, Laws of 1866, in addition to the articles above named, extended the list of exemptions as follows: "In addition to the articles now exempted by law from levy and sale under execution, there shall be exempted from such sale necessary household furniture, and working tools and team, professional instruments, furniture and library owned by any person being a householder or having a family for whom he provides to the value of not exceeding two hundred and fifty dollars, and in addition thereto there shall be exempt from such levy and sale the necessary food for said team for a period not exceeding ninety days, and a sewing machine; provided that such exemption shall not extend to any execution issued on a demand for the purchase-money of such furniture, tools, or team, or the food for said team, or professional instruments, furniture, or library, sewing machine, or the articles now enumerated by law."

"No replevin shall lie for any property taken by virtue of any warrant for the collection of any tax, assessment or fine in pursuance of any statute of this State." (2 *Revised Statutes*, p. 522, sec. 4.)

This provision must, however, be subject to the action of Congress on a subject which by the Constitution is within its jurisdiction. The Constitution in express terms gives to Congress the power "to provide for organizing, arming and disciplining the militia."

By the act of Congress of May 8, 1792 (*vol. 2, Laws of the United States*, 293), every citizen enrolled in the militia is required to provide himself with the following accoutrements, viz.: "A good musket or firelock, a sufficient bayonet and belt, two spare flints and a knapsack, a pouch with a box therein, to contain not less than twenty-four cartridges suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot pouch and powder horn, twenty balls suited to the bore of his rifle, and a quarter of a pound of powder;" and the commissioned officers are required to be armed with a sword, or hanger, or esponton; and it is declared that every citizen so enrolled and providing himself with arms, ammunition and accoutrements, required as aforesaid, shall hold the same exempted from all suits, distresses, executions or sales for debts, or for the payment of taxes.

By the laws of this State (*chap. 6, part 3, title 5, sec. 22, vol. 2, Revised Statutes*), the "arms and accoutrements required by law to be kept by any person," as well as a variety of other articles therein specified, are exempt from execution, but not from distress for taxes. The only exemption, therefore, from the operation of a collector's warrant on a tax list, arises under the act of Congress before quoted, and this can only be extended to the arms, ammunition and accoutrements therein specified.

§ 13. If any person offering to vote at any neighborhood or school district meeting shall be challenged as unqualified, by any legal voter in such neighborhood or district, the chairman presiding at such meeting shall require the person so offering to make the following declaration: "I do declare and affirm that I am an



actual resident of this school district (or separate neighborhood), and that I am qualified to vote at this meeting." And every person making such declaration shall be permitted to vote on all questions proposed at such meeting; but if any person shall refuse to make such declaration his vote shall be rejected.

A party knowing a person to be unqualified and permitting him to vote without challenge will not be allowed to object to the proceedings of the meeting because such unqualified person participated in them. It has been the practice of some of the State Superintendents upon appeal to disregard the objection that unqualified persons voted, unless they were challenged, although it did not appear that the fact of their disqualification was known at the time of the meeting. The rule is well settled, that proceedings will not be vitiated by illegal votes unless a different result would have been produced by excluding such votes. It lies upon the party objecting to show that fact, even, according to the judgment of the supreme court, in *7 Cowen*, 153, if the nature of the proceeding is such as to deprive him of the power, as in the case of a vote by ballot. In the case cited, the court say: "For aught that appears, the spurious ballots were for the ticket which was in the minority. To warrant setting aside the election, it must appear affirmatively that the successful ticket received a number of improper votes, which, if rejected, would have brought it down to a minority." It is also incumbent upon the appellant to state the facts showing the lack of qualification in such terms as necessarily to exclude every presumption that the voter could be qualified under either of the heads stated in the note to the previous section.

A challenge should be interposed at the very first instance in which an unqualified person may offer to vote; for it would be very unjust to permit a party to avail himself of a vote so long as it should be cast in accordance with his views, and then to object when a difference manifested itself between himself and the voter.

If a challenge is interposed upon the vote for chairman, the person who made the nomination ordinarily takes the question upon it, and should regard himself as temporary chairman, and require the declaration prescribed by the statute from the challenged party, which should be given in the very words of the law.

§ 14. Any person who, upon being so challenged, shall willfully make a false declaration of his right to vote at any such meeting, shall be deemed guilty of a misdemeanor, and punished by imprisonment in the county jail for not less than six months nor more than one year. And any person not qualified to vote at any such meeting, who shall vote thereat, shall thereby forfeit five dollars, to be sued for by the supervisors for the benefit of the common schools of the town. (*Sec. 22 of title 3.*)

§ 15. The inhabitants of any neighborhood entitled to vote, when assembled in any annual meeting or any other neighborhood meeting duly called by the commissioner, pursuant to the first or third sections of this title, shall have power, by a majority of the votes of those present :

1. To appoint a chairman for the time being ;
2. To choose a neighborhood clerk and one trustee, and to fill vacancies in office.

There have been no more than five neighborhoods in the State for many years past, and only three have reported during the last two years. The commissioners may find it best to annex them to adjacent districts in this State.

§ 16. The inhabitants so entitled to vote, when duly assembled in any district meeting, shall have power, by a majority of the votes of those present :

1. To appoint a chairman for the time being ;
2. If the district clerk be absent, to appoint a clerk for the time ;
3. To adjourn from time to time as the occasion may require ;
4. To choose one or three trustees as hereinafter provided, a district clerk, a district collector, a librarian, at their first meeting, and so often as such offices or any of them become vacated, except as hereinafter provided ;
5. To fix the amount in which the collector shall give bail for the due and faithful performance of the duties of his office ;
6. To designate a site for a school-house, or, with the consent of the commissioner or commissioners within whose district or districts the school district lies, to designate sites for two or more school-houses for the district ;
7. To vote a tax upon the taxable property of the district to purchase or lease such site or sites, and to hire, build or purchase such school-houses, and to keep in repair and furnish the same with necessary fuel and appendages ;
8. To vote a tax, not exceeding twenty-five dollars in any one year, for the purchase of maps, globes, blackboards, and other school apparatus, and for the purchase of text-books and other school necessities for the use of poor scholars of the district ;
9. To vote a tax, not exceeding ten dollars in any one year, for the purchase of such books as they shall direct for the district library, and such further sum as they may deem necessary for the purchase of a book-case ;

10. To vote a tax to supply a deficiency in any former tax, arising from such tax being, in whole or in part, uncollectible ;

11. To authorize the trustees to cause the school-house or school-houses, and their furniture, appendages and school apparatus, to be insured by any insurance company created by or under the laws of this State ;

12. To alter, repeal and modify their proceedings, from time to time, as occasion may require ;

13. To vote a tax for the purchase of a book for the purpose of recording their proceedings ;

14. To vote a tax to replace moneys of the district lost or embezzled by district officers ; and to pay the reasonable expenses incurred by district officers in defending suits or appeals brought against them for their official acts, or in prosecuting suits or appeals by direction of the district against other parties.

15. To vote a tax, not exceeding twenty-five dollars in each year, for anticipated deficiencies or contingencies, or to pay the wages of teachers in anticipation of the ordinary collections for that purpose, to be replaced by such collections when made ;

16. To vote a tax to pay whatever deficiency there may be in teachers' wages after the public money apportioned to the district shall have been applied thereto ; but if the inhabitants shall neglect or refuse to vote a tax for this purpose, or if they shall vote a tax which shall prove insufficient to cover such deficiency, then the trustees are authorized, and it is hereby made their duty, to raise, by district tax, any reasonable sum that may be necessary to pay the balance of teachers' wages remaining unpaid, the same as if such tax had been authorized by a vote of the inhabitants.

The several powers conferred by this section may be arranged under the following heads :

1. The organization of the meeting by the appointment of its officers ;
2. The power of adjournment ;
3. The election of district officers ;
4. Fixing the amount of the collector's bail ;
5. The selection and designation of school-house sites ;
6. The power of taxation ;
7. The power to alter, repeal and modify their proceedings.

Before discussing the particular powers under their several heads, we will consider the general powers conferred. They are granted to the inhabitants entitled to vote when duly assembled in any district meeting. The exercise

of them cannot therefore be confined to the annual meeting; nor does this conflict with the doctrine that it is the duty of trustees, when giving notice of every meeting, to state the purpose for which it is called. They are bound to inform the inhabitants what business *they*, or those at whose instance they give the notice, propose to lay before the meeting. But their neglect in this particular cannot deprive the inhabitants of any power which the statute confers upon them. The inhabitants are the legislative power, and, when lawfully assembled, are entitled to consider and act upon propositions affecting the interests of the district, by whomsoever offered and with however little premeditation, unless where specially restrained or limited by statute, as they are in respect to a change of site.

The resolutions of the meeting are determined by a majority of the votes of those present and voting, and do not require the votes of a majority of all present *and not voting*. Even if the words of the statute were less explicit this would be the rule at common law, which, as stated by Lord Mansfield (2 *Burr.*, 1021), is: "Whenever electors are present and do not vote at all, they virtually acquiesce in the election made by those who do." In that case twenty-one electors were present, nine of whom voted for S. as town clerk, eleven protested against him without voting for any one else, and one other said "he suspended doing any thing." The action of the twelve was held to be the same as if they had been silent; and being present, but silent, exactly as if they had been absent. They must be taken to assent to what the others agree to in carrying out the purpose of the meeting.

The same doctrine is applied in a recent case (7 *Adolph. & Ellis*, 454) to other resolutions than those for an election. The court say: "The principle, indeed, may be best illustrated by the analogy drawn from electoral meetings; but it is, in truth, of a very general nature, and inseparable from the proceedings of any assembly convened for doing some act necessary to be done at that meeting. The majority must do it; otherwise, however necessary, it will be left undone. But what majority? The majority of those who choose to take a part in the proceedings of the assembly. At almost every meeting of commissioners for executing public works and imposing rates for that purpose, it is probable that the resolution is formed by a small number of those who attend, on whom the larger number are content to rely. If it were found as a fact that five had passed the resolution in a room containing twenty, of whose proceedings the other fifteen were ignorant, this would be the undoubted act of the whole meeting, if the proceedings had been conducted regularly and no fraud were practiced to occasion the ignorance of the fifteen. But suppose the twenty were convened to do an act which the law required them to do at that time, and the only open question was as to the *mode* of doing it; a mode lawful in itself is regularly submitted, whereupon fifteen declare that though the law has imposed the duty on them they entertain so strong an objection, on grounds of conscience, to the law, that they refuse entirely to concur in obeying it. What must be the consequence? Must the law be set at naught and its requirements be disregarded, or must not those who stand aloof be considered as refusing to assist in the execution of their duty and leav-

ing it to be done by the minority, which is desirous of doing what is right?"

The powers of a district meeting, in the order of the statute, will now be considered.

1. *The organization of the meeting by the appointment of its officers.*

a. To appoint a chairman for the time being: As the statute directs the appointment of a *chairman*, he should be so entitled, and not moderator or president. The acceptance of the position does not deprive the chairman of the right to vote upon any question submitted to the meeting. He may either give a casting vote upon a tie, or, when there is a majority of one in favor of any resolution, may vote with the minority, and thus make a tie vote, which defeats the resolution; or without waiting for this result may, upon the call of yeas and nays by the clerk, vote when his name is reached. He can, however, cast but one vote upon the question.

It is the chairman's duty to put every question to vote which is made and seconded. If he deems the motion out of order, he should so declare; if the party making the motion deems his decision upon the point of order erroneous, it is his right to appeal to the meeting from such decision, and, if the appeal is seconded, it is the duty of the chairman to put the question: "Shall the decision of the Chair be sustained?" If upon such appeal the meeting vote against the decision of the Chair, it is the chairman's duty to put the original question; a refusal to do so is disorderly, and it is in such case in the power of the meeting to select a new chairman who will conform to its decision. The motion for this purpose may, from the necessity of the case, be put by the clerk. There being no code of rules to regulate the proceedings of district meetings, that must be held to be in order to which a majority consents. The office of the chairman is to facilitate the ascertaining of the wishes of the majority. If their determination be illegal, the remedy is by appeal.

b. The district clerk (see section 37, of this title) must record all the proceedings of the district, and it is therefore his duty to be present at all meetings. In his absence the inhabitants can appoint a clerk for the time, whose minute of the proceedings the clerk must subsequently record. The best course is to keep a full minute of all motions, resolutions and votes, and afterward copy them in detail into the record book.

2. *To adjourn from time to time, as occasion may require.*—A motion for adjournment takes precedence of all others, for otherwise the meeting might be kept in session against its will, and for an indefinite period. A majority who were desirous of adjourning could not withdraw without leaving all the powers of the meeting in the possession of the minority. And if any other motion were permitted to take precedence, it might be in the power of a factious minority, by renewing such motions, to wear out the physical endurance of the majority. This motion, however, cannot be received after another question is actually put, and while the meeting is engaged in voting upon it; but in such case the vote must be concluded and the result announced by the chairman. If a question be put for adjournment, it is not an adjournment until the chairman pronounces it.

An adjournment is either without day or to a specified time. In the former case all propositions upon which the question has not been taken are discontinued, and are not taken up at another meeting except upon a fresh proposition. In the latter case it is but a continuance of the session; all matters pending remain in the same situation in which they were left, and when the meeting again convenes are resumed at the precise point at which they were left. The statute, however, regards an adjournment for more than one month as constituting a new meeting, so far as to require the posting of written notices of the time and place thereof in *four* at least of the most public places of the district, at least five days before the time appointed. (*See sec. 37, sub. 3, of this title.*) If a special meeting be properly called, or the annual meeting occur in the mean time, its powers in reference to any subject are not impaired by the fact that a previous meeting, having such subject under consideration, stands adjourned to a subsequent day. (*See 6 Metcalf [Mass. Rep.], 509.*)

3. *The election of district officers.*—The officers to be chosen at an annual meeting are, one or three trustees, a district clerk, a district collector, and a librarian. The choice is subject to the limitations contained in sections twenty-three and twenty-four of this title, by which a school commissioner or supervisor are ineligible to the office of trustee; and no trustee can hold the office of district clerk, collector or librarian; and by which the officer chosen must be a resident of the district and qualified to vote at its meetings. All the officers named are to be elected at the first meeting of the district, and as often as vacancies occur for any cause. In reference to votes cast for disqualified candidates, the law is thus stated in 7 *Adolph. & Ellis*, 437: "The result of the decisions appears to be this: Where the majority of electors vote for a disqualified person in ignorance of the fact of disqualification, the election may be void, or voidable, or in the latter case may be capable of being made good, according to the nature of the disqualification. The objection may require ulterior proceedings to be taken before some competent tribunal in order to be made available, or it may be such as to place the elected candidate on the same footing as if he had never existed and the votes for him were a nullity; but in no case are the electors who vote for him deprived of their votes. If the fact becomes known and is declared while the election is still incomplete, they may instantly proceed to another nomination and vote for another candidate. If it be disclosed afterward, the party elected may be ousted, and the election declared void (by a competent tribunal); but the candidate in the minority will not be deemed *ipso facto* elected. But where an elector before voting receives due notice that a particular candidate is disqualified, and yet will do nothing but tender his vote for him, he must be taken voluntarily to abstain from exercising his franchise; and therefore, however strongly he may in fact dissent, and in however strong terms he may disclose his dissent, he must be taken in law to assent to the election of the opposing and qualified candidate, for he will not take the only course by which it can be resisted, that is, help to elect some other person. \* \* \* If he dissents from the choice of A., who is qualified, he must say so by voting for some other, also qualified; he has no right to employ his franchise merely in preventing an election, and so defeat-

ing the object for which he is empowered and bound to attend. \* \* \* Where the disqualification depends upon a fact which may be unknown to the elector, he is entitled to notice, for without that the inference of assent could not fairly be drawn, nor could the consequences as to the vote be just ; but if the disqualification be of a sort whereof notice is to be presumed, none need expressly be given. No one can doubt that if an elector would nominate and vote only for a woman, his vote would be thrown away. The fact would then be notorious, and every man would be presumed to know the law upon that fact."

A person who is present at the meeting, when elected to any office, will be deemed to accept the same unless he declares his refusal, so that if the meeting chooses to excuse him a new election may be had. (See section 28 of this title.) If votes are given for him for an incompatible office, subsequent to such acceptance, it is in his power to elect which of the offices he will hold, and, if present, he should declare which he vacates, that the meeting may at once proceed to fill it.

If the meeting in his absence elect him to two offices, he can take the legal steps to qualify himself for the one he chooses to accept, and the other will be vacant.

When a meeting has elected its officers, and the vote, whether by ballot or *viva voce*, has been declared, by the presiding officer, the power of the meeting is exhausted. It will not be permitted to rescind its vote and annul an election. The ordinary proceedings of a meeting, such as the voting of a tax, the designation of a site, and the acceptance or disapproval of a trustee's account, may be reviewed, altered or rescinded, but, an election once made, the person elected has a right to enter upon the duties of the office, and a second election would be an attempt to put another officer in a place already filled.

The inhabitants have the power and it is their duty to fill every vacancy existing in a district office, notwithstanding it has existed more than one month. If the vacancy has been created by any other cause than the expiration of the incumbent's term, it is advisable that a resolution should be passed declaring such vacancy to exist, and expressly stating the ground on which the meeting adjudges the office vacant. Cases are reported where removal from a district, though not such as to forfeit the rights of the party as an inhabitant, and where an actual incapacity to serve, though not declared by law, have been held sufficient to justify treating them as creating a vacancy. In such cases, the officer removing, or becoming incapable, for any reason, of discharging his duties, ought to furnish written evidence thereof by a tender of his resignation. If he omits to do so, it is for the appointing power to judge in the first instance whether a vacancy exists ; and although it may err in so declaring, the officer appointed will be deemed an officer *de facto*, and his acts in relation to the public and third persons deemed valid, until his election is pronounced void.

4. *Fixing the amount of the collector's bond.*—By section 83 of this title, the collector, within ten days after having received notice, and before any warrant is placed in his hands for the collection of money, must execute a bond in the amount fixed by the meeting, conditioned for the faithful discharge of his official duties.

If the meeting omit to pass any resolution fixing the amount of bail, the trustees must fix it at such sum as they deem reasonable.

5. *The selection and designation of school-house sites.*—The designation of a site should be made by a written resolution, in which the description should be given by metes and boundaries. The selection may be made in advance by the trustees or any other person, the title investigated, the price agreed on, and all the preliminary terms of the purchase settled. A survey should be actually made, and the dimensions precisely known. The passage of a resolution designating a site will then be the formal act of the meeting. But the site will not be so determined by such a vote as to require a special meeting to change it, until a legal title has been acquired by the execution and delivery of a deed, or by the making of a valid contract for the purchase, which, to be binding under the statute of frauds, must be in writing, under seal, and subscribed by the parties to be bound thereby.

The question frequently arises whether the district has a title to a site, so as to render a new designation equivalent to an *additional* site requiring the consent of the school commissioner, or a *change* of site requiring a meeting called by special notice for that purpose. It is ordinarily started in consequence of doubts as to the title of a site actually occupied or claimed by the district, growing out of the want of a deed, or the loss of a deed without its having been recorded, where one was originally executed.

A right in real estate may be acquired either by grant, by deed duly executed and delivered, or by an adverse possession of twenty years under claim of title, in which case the law presumes a grant, or by a valid contract for the conveyance, where a court of equity will enforce a specific performance, or in the case of the public by dedication.

In reference to the first mode: In the case of occupation under a grant, it is not material that the deed has been lost, for the paper itself is but evidence of the fact, and, upon showing its loss, the existence and contents of the deed may be proved by other testimony; nor is the fact of its not having been recorded material, for the recording act is only for the benefit of purchasers in good faith and without notice, and the possession of real estate is held by the courts to be sufficient notice to put a purchaser upon inquiry as to the rights of the party in possession, and to charge him with notice of all facts to which such inquiry might have led.

As to the second mode of acquiring title, by adverse possession, it may be first remarked, that a mere naked possession, without any claim of right or title, will not constitute a defense against one who can prove a better right of possession. The possession of a person who has no title, no right of possession, and sets up no claim of right, will be deemed the possession of the real owner, and will inure to his benefit.

Many school-house sites in the State are held by adverse possession. The school trustees sometimes failed to procure deeds of conveyance, and sometimes failed to have them recorded; and so, in process of time, they have been mislaid and lost, and all evidence of their existence is gone. In all such cases, when the district has claimed title and kept possession for twenty years and



upward, the title is held adversely. But there must be a claim of title, and this claim must be of the entire title, and one which necessarily excludes the idea of title in any other. An adverse possession must be an actual and hostile possession. It involves an assumption of the right to the land in question, from the time it is alleged to have commenced, and a continued holding with the assertion of right. It must be visible and notorious, and exclude the exercise of ownership by the other party, and must be hostile in such sense as to indicate intent to occupy exclusively. (9 *Wend.*, 511; 9 *Johns.*, 180; 5 *Cow.*, 74; 17 *Barb.*, 663; 19 *Barb.*, 644; 2 *Smith's S. C.*, 39; 9 *Cow.*, 530; 5 *Cow.*, 346; 5 *Cow.*, 539; 5 *Wend.*, 532; 9 *Johns.*, 174.)

The district can hold only what land has been actually occupied. If there is no written title, and reliance is placed upon possession with an assertion of title, only so much land can be retained as is under actual improvement. If there has been possession of the house only, and the land on which it stands, then only so much land can be retained. If there has been a yard inclosed by a fence, then all the land that has been so inclosed can be retained. (1 *Johns.*, 158; 2 *Johns.*, 234; 2 *Johns.*, 230; 7 *Wend.*, 62.)

Where there has been an *actual occupation* of premises in any of the modes above described, an *oral claim* of exclusive right is sufficient, without the pretension that such claim is founded upon a written instrument, and a claim of title even under a paper altogether void and inoperative as a deed will yet characterize a possession as adverse. (24 *Wend.*, 604.) The possession is evidence only of such title as the party has asserted. If, therefore, the claim has been only to hold at sufferance, or conditionally, or for a term of years, it can never ripen into a better title.

If land has been conveyed to a district to be held so long as it shall be used for a school-house site or for school purposes, then, upon the abandonment of the site, and the removal of the house to some other location (and the house should be removed before the site is abandoned), the land will revert to the original grantor, or to his heirs and assigns. If adjoining land be purchased, and the house removed to the new purchase, but the former premises be still retained and used as a yard or play ground, the district will still hold it.

If a house has been built upon land held under a lease, and the title has come from the lessee, then the district can hold only during the term of the lease.

It behooves a district to see that land is not bought of persons who have only a life estate, or a leasehold, or any title less than a fee simple, for it is a general rule that a man cannot grant any higher title or greater estate than he owns.\*

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\* ADVERSE POSSESSION. — The provisions of the Code on this subject are as follows:

§ 81. *Possession presumed. Occupation, when deemed under legal title.*—In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the premises shall be presumed to have been possessed thereof within the time required by law; and the occupation of such premises by any other person shall be deemed to have been under and in subordination to the legal title, unless it appear that such premises have been held and possessed adversely to such legal title for twenty years before the commencement of such action.

§ 82. *Occupation under written instrument.*—Whenever it shall appear that the occupant, or those under whom he claims, entered into possession of premises under claim of title,

A district may, in the fourth place, acquire title to a site by dedication, which means the setting apart for public use, in some solemn manner, a lot of land, for a street, or a park, or a square, or a market, or a church, or a school-house, or other public purpose. This may be done by deed, or by a map on which lots are marked off for public use. In the case of *Potter v. Chapin* (6 Paige, 639), the inhabitants of a village and others contributed money, labor and materials, and built a school-house for the general benefit of the inhabitants, and the court held that this was a dedication to the village public for the purposes of education, which would be upheld in equity.

This dedication may be with or without writing, if it be for public, pious, or charitable purposes, provided the person making it devotes it by some open

exclusive of any other right, founding such claim upon a written instrument, as being a conveyance of the premises in question, or upon a decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises included in such instrument, decree, or judgment, or of some part of such premises, under such claim, for twenty years, the premises so included shall be deemed to have been held adversely; except that when the premises so included consist of a tract divided into lots, the possession of one lot shall not be deemed a possession of any other lot of the same tract.

§ 83. *Adverse possession*.—For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases:

1. When it has been usually cultivated and improved;
2. When it has been protected by a substantial inclosure;
3. Where, although not inclosed, it has been used for the supply of fuel or of fencing timber, for the purposes of husbandry, or the ordinary use of the occupant;
4. Where a known farm or a single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed, according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

a. An adverse possession not founded on any written instrument extends only to the land fenced, cultivated and improved. (*Overing v. Russell*, 32 Barb., 263.)

b. An adverse possession commenced in the life-time of the ancestor continues to run against his heir, although the heir may be under disability. (*Becker v. Van Valkenburgh*, 29 Barb., 319.)

c. A general assertion of ownership irrespective of any particular title will constitute an adverse possession. (*Crory v. Goodman*, 22 N. Y., 170; *Miller v. Garlock*, 8 Barb., 153; *Becker v. Van Valkenburgh*, 29 Barb., 319; *Fish v. Fish*, 39 Barb., 513.)

§ 84. *Premises actually occupied held adversely*.—When it shall appear that there has been an actual continued occupation of premises, under a claim of title, exclusive of any other right, but not founded upon any written instrument, or a judgment or decree, the premises so actually occupied, and no other, shall be deemed to be held adversely.

§ 85. *Adverse possession under claim not written*.—For the purpose of constituting an adverse possession by a person claiming title not founded on a written instrument, or a judgment or decree, land shall be deemed to have been possessed and occupied in the following cases only:

1. When it has been protected by a substantial inclosure;
  2. When it has been usually cultivated or improved. (*Miller v. Garlock*, 8 Barb., 153.)
- § 86. *Relation of landlord and tenant*.—Whenever the relation of landlord and tenant shall have existed between any persons, the possession of the tenant shall be deemed the possession of the landlord, until the expiration of twenty years from the termination of the tenancy; or, when there has been no written lease, until the expiration of the twenty years from the time of the last payment of rent; notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumption shall not be made after the periods herein limited.

§ 87. *Descent cast*.—The right of a person to the possession of any real property shall not be impaired or affected by a descent being cast in consequence of the death of a person in possession of such property.

§ 88. *Persons under disabilities*.—If a person entitled to commence an action for the recovery of real property, or to make an entry or defense founded on the title to real property, or to rents or services out of the same, be, at the time such title shall first descend or accrue, either—

1. Within the age of twenty-one years; or,
2. Insane; or
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offense for a term less than for life; or
4. A married woman—The time during which such disability shall continue, shall not be deemed any portion of the time in this chapter limited for the commencement of such action, or the making of such entry or defense; but such action may be commenced, or entry or defense made, after the period of twenty years, and within ten years after the disability shall cease, or after the death of the person entitled who shall die under such disability; but such action shall not be commenced, or entry or defense made after that period,

and public declaration, or refers to it in deeds, or maps, as a plot, or piece of land set apart for such use; as if a man should lay out a tract of land into city or village lots, and mark some of them, "school lot," "market lot," "church lot." (*See Pa. State R., p. 444.*) All that is required is the assent of the owner of the land, clearly manifesting his purpose to make a permanent appropriation, and the fact of its being used for the public purpose intended by the appropriation. (*See 6 Hill, 412.*)

If the district has need of more than one site, the power to designate is qualified, and must be preceded by the consent of the school commissioner, or commissioners, within which the district, or districts, are situated. The provision for more than one site and school-house is intended to obviate the inducements to a division of districts. There are great advantages in large and populous districts; and it has always been the policy of the department to discourage their division, unless it becomes necessary on account of the great distance which children are compelled to travel in going to school. It may often be convenient to have a school-house for very young children separate from that attended by those more advanced. In cases of dissatisfaction with a teacher, there is the opportunity for parents to exercise a choice, without the serious injury to the course of instruction which results from withdrawing their children entirely from the public schools. It may frequently be profitable to hire temporarily a building or rooms for an additional school-house, where there is not such an absolute *necessity* for it as would prompt the trustees to exercise that power under section 50 of this title.

In answer, therefore, to the question, what title to a site a district must have, in order to require the consent of the commissioner to the purchase of an additional site, or a change of site requiring a meeting called by special notice for that purpose, it may be said: A title in fee simple, or a right to occupy as long as the site is used for school purposes, or as long as a stipulated rent is paid; or a title by adverse possession, or dedication. In these cases a district may be said to own the site, which is not true when a site is leased for a year or a term of years.

6. *The power of taxation.*—Under this head come nine of the sixteen subdivisions of this section.

SUB. 7. A tax to purchase or lease a site and to hire, build, or purchase school-houses.

It is not necessary to designate a site before laying a tax to build a school-house. (17 *Wend.*, 437; 3 *Denio*, 116.) The same rule will apply to a tax for the purchase of a site. The inhabitants may vote such tax as they "deem sufficient," and if, upon the selection of a site and the negotiation for its purchase, the tax is found to be, in fact, insufficient, may vote a further tax. If it be found unnecessarily large, they may vote to refund the excess to the tax payers or appropriate it to any purpose for which they have power to lay a tax. (*Com. School Dec.*, 315.) There is no limitation to the amount which may be voted for the purchase of a site, and the expense of investigating the title and recording the deed may legitimately be included. The purchase of additional ground to enlarge the site is not a *change* of site, and does not

require the vote of a meeting called by special notice, nor the consent of the school commissioner. It is not uncommon for districts to hold land under lease, granting it for a consideration, paid in advance, so long as the same shall be used for the site of a school-house or the purpose of a district school. It is greatly to be preferred that the district should obtain an indefeasible estate in fee simple, and, whenever possible, it should be procured, and since the statute (*chap. 800, Laws of 1866*) has authorized the compulsory taking of land for sites, by right of eminent domain, there is no longer any necessity for leasing a site, and it is recommended to districts, whenever they cannot purchase an indefeasible estate in fee simple, that they resort to the law which now gives them power to select in every district the most eligible situation for their school-house.

In cases where heretofore land has been leased, the question will frequently arise as to the right of the district to the school-house at the expiration of the term for which the land is held. The law is thus stated by Judge Harris (7 *Barb.*, 266): "Any one who has a temporary interest in land, and who makes additions to it or improvements upon it for the purpose of the better use or enjoyment of it, while such temporary interest continues, may, at any time before his right of enjoyment ceases, rightfully remove such additions and improvements. If he omit to sever the addition or improvement until his right of enjoyment ceases, such omission is to be deemed an abandonment of his right, and thereafter the addition or improvement he has made becomes, to all intents, a part of the inheritance, and the tenant, as well as any other person who severs it, becomes a trespasser. I think this may now be stated to be the general rule in respect to fixtures which a tenant attaches to the freehold. To this extent has the original rule of the common law yielded to the changed condition of society. There may be exceptions to the general rule I have stated, but I think they will be found limited to cases where the removal of the additions or improvements made by the tenant would operate to the prejudice of the inheritance, by leaving it in a worse condition than when the tenant took possession."

A tax voted for the purchase of a site cannot be voted by installments.

While it is no objection to a tax that a title has not been acquired, it is the duty of the trustees not to part with the money without receiving a conveyance, and, in respect to this duty, a question frequently arises about incumbrances by way of mortgage. The vote appropriating money for the purchase of a site is to be construed as limiting the amount the district can at any time be called upon to pay for it, and therefore implies (unless the contrary expressly appears) a title free from any incumbrance. Where a portion of a tract subject to mortgage is purchased, the rule of law is that upon a foreclosure the land remaining the property of the mortgagor shall be first sold, and if that prove insufficient to satisfy the mortgage, then that which he has conveyed is to be sold in the inverse order of alienation; that is to say, that which he conveyed latest is to be sold first. It may frequently happen that the district will have ample security, in the land retained by the person from whom it derives title to a site, for its indemnity against a mortgage, and that the existence of a

mortgage, covering land greatly exceeding in value the amount secured thereby, will be but a nominal incumbrance and no serious objection to the title. If this be clear, however, there will ordinarily be little difficulty in procuring from the holder of the mortgage a release of the site from its lien. If the trustees fail in obtaining it, they will be justified in requiring an express vote of the district, after laying the facts before a meeting, before paying for the site or making any expenditure or contract for building upon it.

In regard to the power to vote a tax for a school-house, the question sometimes arises how far it is permissible that the house should be connected with other erections made for different purposes, and subject to other control than that of the district. It is held that there can be no partnership in the erection of a school-house which will prevent the district from controlling it entirely for the purpose of a district school, and that a tax cannot be voted for a building for joint use, as a church and school-house or an academy and school-house. (*Com. School Dec.*, 201, 290.) It is not essential, however, to constitute a house, that it should include the whole of the building in which it is contained. Apartments, with an outer door to each, and having no communication with each other, are considered as distinct houses, though they originally made but one. (*6 Mod. R.*, 214.) In *6 Mete.*, 510, the supreme court of Massachusetts held that "if, under color of this corporate power of a district, the district should vote to erect an expensive and ornamental building, with a view to improve the neighborhood, to enhance the value of real estate, to accommodate societies, lecturers, dramatic exhibitions, or even to have a convenient place for religious meetings or public worship, or for any other use than that of a district school, it would not be within the legitimate authority of a school district, and any vote to levy a tax on the inhabitants for such purpose would be void." In that very case, however, the court sustained a tax of \$1,700, voted with liberty to certain persons "to build a hall over the school-house, with the privilege of an entrance and stair-way in the front entry of said house, in consideration that the district may have the use of said hall, free of charge, for all school district meetings, for all examinations of its schools, and for the delivery of lectures on the subject of education, no public meeting being held in said hall during the usual school hours unless by consent of the prudential committee of the district, and the proprietors of said hall insuring the whole building." In *1 Mete.*, 541, it was held that tenements are as essentially distinct when one is under the other, as where one is by the side of the other; and in *4 Mass. R.*, 576, the court say that "in legal contemplation, each of the parties has a distinct dwelling-house, adjoining together, the one being situated over the other. The lower room and the cellar are the dwelling-house of the defendant; the chamber, roof and other parts of the edifice are the plaintiff's dwelling-house." (*See also 10 Conn. R.*, 318.)

While it is very desirable that every district should own an ample and commodious school-house, entirely separate from every other building, it sometimes happens in feeble districts that the scantiness of their means renders it necessary to consult economy by uniting with a religious society or other association in

erecting two houses under the same roof; the upper story, for example, being a church or town hall, while the lower is a school-house.

No legal objection is conceived to exist to such an arrangement, provided the district secures, by proper covenants: *First*, The undivided control at all times of the school-rooms and of the doors and passages affording access thereto. *Second*, That the other rooms shall not be used at any time during school hours for an assemblage or purpose which can distract the attention of pupils, or interfere, by noise or otherwise, with their instruction. *Third*, That the parties using the other rooms shall pay the whole, or a definite proportion, of the expense of such repairs upon those rooms, or the roof or other parts of the building, as the district shall, from time to time, deem necessary for maintaining the school-house in good condition and protecting it from injury by leakage or otherwise. *Fourth*, That those parties shall pay the expense of any insurance necessary to protect the district from the increased risk of fire, caused by any use to which the other parts of the building may be put. The best mode to secure the performance of these covenants is for the district to insert them as a condition, in a lease of the rooms, to be executed by the trustees—the district retaining the general title to the site and every thing upon it—and the lease to terminate upon a breach of any of the conditions, besides authorizing, in express terms, the trustees to recover any damages the district may sustain by a failure to perform any of the conditions. It should also contain an express provision that whenever a district meeting shall determine that the residue of the building is needed for school purposes, the same shall become its property upon payment of the then appraised value of the labor and materials used in its construction.

A fence, separate privies for the two sexes, wood-house, stoves, stovepipe and bell have been held to be necessary appendages to a school-house, or rather that it is within the discretion of a district meeting to adjudge them such and vote a tax therefor.

STB. 8. A tax for maps, globes, blackboards and other school apparatus, and for the purchase of text-books and other school necessities for the use of poor scholars of the district, not exceeding \$25.

The principal facts in geography are learned better by the eye than in any other manner, and there ought to be in every school-room a map of the world, of the United States, of this State and of the county. Globes, also, are desirable. Large blackboards, in frames or plaster, are indispensable to a well conducted school. The operations in arithmetic performed on them enable the teacher to ascertain the degree of the pupils' acquirements better than any result exhibited on slates. He sees the various steps taken by the scholar, and can require him to give the reason for each. It is in fact an exercise for the entire class; and the whole school, by this public process, insensibly acquires a knowledge of the rules and operations in this branch of study.

Cards, containing the letters of the alphabet or words, may be usefully hung up in the room. Indeed, the whole school apparatus now provided by respectable dealers is eminently calculated to facilitate the acquisition of knowledge and to render it agreeable.

There is some difficulty in limiting definitively the meaning of the words, school apparatus. Few would hesitate to admit that a copy of any good dictionary, or an atlas for reference by teacher and pupils, came fairly within the intent of the statute. If the inhabitants should deem it proper to furnish, by tax, text-books to be used by the pupils in school, the statute gives them a reasonable discretion. A change in text-books is a heavy charge upon the poor, and the district would act in the spirit of this law by voting at every annual meeting a sum of money to be used by the trustees in the purchase of text-books for poor scholars.

SUB. 9. It is believed that the loss and decay of the district libraries have been greatly owing to the neglect of the district to purchase suitable book-cases. Ten dollars a year would be a small sum for any district to expend for good books. If this sum had been added to the library money annually distributed since 1838, every district in the State would have had a good collection of books. It may be safely asserted that the family, the neighborhood, the village, or the city that has access, daily, and constantly, to a good library, will exceed those denied such privilege, in education, intelligence, and morals.

SUBS. 10 AND 15. If the power granted in subdivision 15 to raise twenty-five dollars, for anticipated deficiencies and contingencies, be annually used, it will be hardly ever necessary to exercise that given in subdivision 10.

SUB. 11. School-houses should always be insured to an amount equal to two-thirds of their value. The insurance must be in companies incorporated by or under the laws of this State.

SUB. 13. To vote a tax for the purchase of a book for the purpose of recording the proceedings of their respective districts. The importance of full and exact records of district proceedings cannot well be exaggerated. They ought to be so kept as to show upon their face every fact of which it might be necessary to give evidence in a suit at law, in order to establish the validity of every resolution adopted. For example, the order of the trustees for calling a meeting, the return of the clerk showing upon whom and in what manner he had served notice, the consent of the school commissioner or supervisor when required to authorize a proceeding, might much better be engrossed in the book of records, in the first instance, than left to rest upon the uncertain custody of loose pieces of paper. It may be necessary to prove the facts at a remote period of time; and the way to avoid controversy in respect to them is always to act upon the presumption that controversy will arise, and to prepare the evidence, in advance, to meet it. The habit of doing this will of itself do much to preclude all opportunity for cavil.

It is always desirable that the records should show who were present and took part in the proceedings of each meeting. For this purpose the orderly method of proceeding would be for the clerk (or person officiating as such), immediately after the organization of the meeting, to read the order under which it was called, and the list from his return of the persons on whom he served notice, requesting each one present to answer as his name is read; noting, upon the minutes: "On reading the clerk's return of the inhabitants on whom he had served notice, the following were found to be present, viz.:

Abraham Jackson, Abraham Jackson, Jr., etc." At an annual meeting, for which no personal service of notice is necessary, the clerk could call the roll from a list of the inhabitants alphabetically arranged. In either case he should note on the minutes the presence of every voter, although no notice had been served upon him.

If any person offering to vote is challenged, the fact should be noted in the minutes, and also whether he made or declined making the declaration required by law. This is important, because no person will be permitted to question the proceedings of a meeting on the ground of the illegality of a vote, if he stood by and saw it offered without objection, unless he shows himself to have been ignorant of the facts which would have required him to object. Nor will the illegality of the vote be regarded unless it affected the result, and, therefore, it is highly desirable that the minutes should show how each person voted on each proposition submitted to the meeting. The Christian names of the voters should be given, and not merely their initials.

It is proper, but not legally necessary, that the minutes should be read over to the meeting, for its approval or correction, if need be, before the adjournment. In order to enable the clerk to do this, all resolutions should be reduced to writing before the question upon them is taken.

As the cost of a little paper is of the most trifling consequence in comparison with the advantages of having a neat and accurate history of district proceedings in a shape for convenient consultation, it would be well for each district to provide a book of records, of at least foolscap size, firmly bound, and with a sufficient number of pages to contain ample records for a series of years.

SUB. 14. Moneys lost and embezzled by district officers are recoverable, in the first place from such officers, and secondly from their bail. But before it would be possible in a suit at law to regain the money so embezzled, or lost, the district may be required to pay debts, and liabilities that cannot be postponed—hence the propriety of this provision.

What are reasonable expenses must be left to the judgment of the trustees and the discretion of the inhabitants. A bill of expenses should always be kept and presented by district officers, or the district might reasonably refuse to pay.

SUB. 16. The deficiency heretofore made up by a rate bill must hereafter be supplied by a tax. The increase of the State tax will enable many districts, and it is hoped a majority of them, to keep a school twenty-eight weeks, without a resort to district taxation. The law does not specify the time when this deficiency shall be provided for. The better course in all the districts in the State will be to vote a tax for the several purposes named in the eighth, ninth, tenth, eleventh, thirteenth, fifteenth and sixteenth subdivisions, at the annual meeting. A single resolution reciting the amount to be raised for each purpose would be sufficient. The whole could then be collected in one tax list, and by one warrant.

There is another reason why the meeting should provide beforehand for this deficiency. It will be small in most districts but the amount will be necessary



to enable the trustees to pay the teachers in full at the close of their school. The delay and expense to which teachers have been subjected in getting their wages have been the crying evil of our school system. So long as the wages of a teacher were to be assessed upon the patrons of the school in proportion to the attendance of their children, it was impossible to determine how much each patron would be required to pay, until the close of the school, for the rate bill could not be made out until the teacher's daily register was complete for the whole term. But now the trustees can tell within a few dollars how much their school will cost, and the money may better be voted at the annual meeting than to wait until the close of each term.

The law makes it the duty of the trustees to hire a teacher, and keep a school for twenty-eight weeks, and if the inhabitants neglect, or refuse to vote a tax, the trustees are empowered by this subdivision to raise "any reasonable tax necessary to pay the balance of teachers' wages remaining unpaid." The wiser course, therefore, will be for the district at the annual meeting to provide for all the reasonable expenses for the year.

Where a tax is voted by the inhabitants for any purpose, the specific amount of the tax and the particular purpose for which it is designed should be fully and clearly stated. And where several objects of expenditure are to be provided for, the amount to be raised for each should be expressed in the resolution in order that the district and the trustees may know the precise extent of their liability and the mode of its application. There may be cases, however, where the necessary amount to be raised cannot be ascertained with any approach to accuracy, and in such cases the district may direct the performance of specific acts by the trustees, or authorize them to incur such expenses as may be necessary to the accomplishment of a particular object to be specified, and the trustees are then authorized by section 51, of this title, to raise such amount by tax upon the district, in the same manner as if the definite sum to be raised had been voted. This provision was held in 4 *Denio*, 248, to cover a case where the trustees were directed to build a house of specified dimensions and to let the job of building to the lowest bidder, which had the effect of restricting the expense to a less sum than four hundred dollars; and the court say that "if the district had left the whole to the discretion of the trustees, and they had kept within the four hundred dollars, the act would have authorized the raising of the money." (See also 5 *Hill*, 44.) It was held by Superintendent Young that the inhabitants of a district may legally vote a tax to *enlarge* their school-house, notwithstanding it may already have cost \$400, without a certificate from the town superintendent. This general delegation of authority should, however, be resorted to only in cases of necessity.

It was held (24 *Wend.*, 266) that the direction in the vote of a tax for repairs, that the *collection* was to be postponed until the repairs were done, did not invalidate the resolution or the tax, the tax list being made out thirty days after the vote.

SUB. 12. *The power to alter, repeal and modify their proceedings from time to time, as occasion may require.*—The power to repeal proceedings must be exerted before they have been carried into effect, so that other parties have acquired

rights or incurred responsibilities under them. Thus, where a tax list and warrant had been made out but not delivered to the collector, the inhabitants were held to have the power to rescind the vote imposing the tax (4 *Hill*, 109), but not where the greater part had been collected (4 *Barb.*, 25). Where trustees have made a contract under the authority of the district, it is in effect the contract of the district, and it is beyond its power to rescind the contract by repealing the resolution in pursuance of which it was made. A full release of damages from all persons having acquired any right of action, or the restoration of things to the same condition as they were in when a resolution was passed, might give the district the right to repeal or modify it.

Any resolution directly or necessarily repugnant to a previous one repeals it; and the rule in relation to statutes is laid down (3 *How.*, *U. S. R.*, 636), that if a subsequent statute be not repugnant in all its provisions to a prior one, yet if the latter statute was clearly intended to prescribe the only rule that should govern in the case provided for, it repeals the prior one. As repeals by implication are not favored by the courts, it is advisable that a resolution should be repealed in express terms, where such is the intention. When this is proposed at the same meeting (including adjourned sessions thereof) at which the resolution was passed, it is usually by a motion for reconsideration. The general parliamentary rule is, that the motion to reconsider can only be made by a person who voted with the successful side upon the question to be reconsidered. The reason of the rule is, that but for it the members in the minority might exhaust the time of the meeting fruitlessly; for it is to be presumed that the vote will be the same, unless the contrary is shown by some person who voted with the majority indicating a change of mind. It has been held that this rule does not prevail in a district meeting unless the meeting adopts it. In that case the majority of the meeting chose to disregard it. Nevertheless it is a very proper rule of order to be applied by the chairman, subject to a reversal on an appeal to the meeting from his decision; when, if a majority wish to reconsider, they can indicate it by overruling him. If a motion to reconsider is carried, the resolution to which it relates is open to amendment, and, if not again passed in its original or an amended form, is rejected. If, without taking the question on the original resolution a second time, the meeting separates for an adjourned session, it may then be called up and adopted or rejected.

The unqualified repeal of a repealing statute revives the original enactment. This rule was applied, in 2 *Denio*, 233, to a vote on the 5th December, repealing a vote of November 25th, which latter repealed the vote for a tax, passed October 7th, and it was held that the vote for a tax was renewed on the 5th December, though a tax list made out under the original vote fell to the ground, and a new one was required to be made *after* December 5th.

It is obvious that the meeting cannot do, under the form of reconsidering or modifying a former proceeding, what it could not do directly; and therefore, though it may rescind a resolution designating or changing a site, it cannot adopt a new one, unless it was called, or be an adjourned meeting which was called, by a special notice for that purpose.

## SECOND ARTICLE.

*Of district school-houses and sites.*

§ 17. No school-house shall be built so as to stand, in whole or in part, upon the division line of any two towns.

§ 18. No tax voted by a district meeting for building, hiring or purchasing a school-house, exceeding the sum of one thousand dollars, shall be levied by the trustees, unless the commissioner, in whose district the school-house of said district is situated, shall certify, in writing, his approval of such larger sum.

It is the *tax* that is limited to \$1,000, not the expense of building the house, which may include, in addition, the avails of the sale of the former house and site. If, after the expenditure of \$1,000 in building the house, the tax is found insufficient to finish it, the commissioner may certify that the further sum necessary, specifying it, ought to be raised, and the inhabitants may vote a tax for the amount so certified. (*Com. School Dec.*, 258.) If this additional amount prove insufficient, the commissioner may again certify and the inhabitants vote a further tax. (*Id.*, 340.)

The commissioner whose certificate is to be obtained is the one having jurisdiction of the town in which the school-house *is to be* erected. The law forbids the division of a town in forming an Assembly district or in dividing a county into school commissioners' sections. Section 17 of this title also provides that "no school-house shall be erected so as to stand on the division line of any two towns."

The limitation of this section applies only to the *school-house*. The amount of tax which may be voted for purchase or lease of site, and for repairs, furniture, fuel and appendages, is left wholly to the discretion of the district.

§ 19. Whenever the majority of all the inhabitants of any school district entitled to vote, to be ascertained by taking and recording the ayes and noes of such inhabitants attending at any annual, special or adjourned school district meeting, legally called or held, shall determine that the sum proposed and provided for in the next preceding section shall be raised by installments, it shall be the duty of the trustees of such district, and they are hereby authorized, to cause the same to be raised, levied and collected in equal installments, in the same manner and with the like authority that other school district taxes are raised, levied and collected, and to make out their tax list and warrant for the collection of such installments, with interest thereon as they become payable, according to the vote of the said inhabitants; but the payment or col-

lection of the last installment shall not be extended beyond five years from the time such vote was taken; and no vote to levy any such tax shall be reconsidered except at an adjourned, general or special meeting, to be held within thirty days thereafter, and the same majority shall be required for reconsideration that was had to impose such tax.

No other tax can be raised by installments under this section than one for building, hiring or purchasing a school-house, and in that case only when it exceeds \$1,000. The installments must be *equal*, and cannot be distributed in unequal amounts. A majority of the *voters* present may (with the certificate of the commissioner) lay the tax to be collected immediately, but it is required that they should also constitute a majority of the *inhabitants* entitled to vote *attending* for the purpose of directing the manner of its collection by installments.

The general practice has been, and it is believed to accord best with the intent of the statute, for the trustees to make out their tax list for the first installment upon the taxable property as it then exists, and for their successors to make separate tax lists thereafter upon the taxable property as it exists at the time the installments respectively become payable. Persons may thus become subject to the tax who had no means of resisting its imposition; but the erection of a school-house is to be regarded as a permanent benefit to the district, and they voluntarily assume the burden of paying for it by becoming inhabitants. It would seem necessary that the warrant for the collection of the last installment should be returnable within five years from the time of taking the vote, and therefore that the tax list for it should be made out at least thirty days before that time.

The installments may be semi-annual, annual, or biennial, or at whatever intervals the meeting may determine. In levying the tax for the payment of each installment, as it falls due, the trustees are authorized to add the interest due on it.

§ 20. So long as a district shall remain unaltered, the site of a school-house owned by it, upon which there is a school-house erected or in process of erection, shall not be changed, nor such school-house be removed, unless by the consent, in writing, of the supervisor or supervisors of the town or towns within which such district shall be situated, stating that, in his or their opinion, such removal is necessary; nor with such consent, unless a majority of all the legal voters of said district, present and voting, to be ascertained by taking and recording the ayes and noes, at a special meeting called for that purpose, shall be in favor of such new site.

Any alteration of the territory of the district, however trifling, made subsequent to the building or purchase of a school-house, dispenses with the necessity of the consent of the supervisor to authorize a district meeting to change the site of *that* school-house, but no change of the *inhabitants* constitutes an alteration unless accompanied by a change of boundaries.

The site may be changed, so far as the prohibition of this section affects the question, at any time before a *school-house* standing thereon shall have been built or purchased. But after the *site* has been purchased, or the trustees have made themselves legally responsible by a valid contract to purchase it, in pursuance of a resolution of the district, it becomes an established site, so that the resolution cannot be rescinded, under the general principle that a resolution which has been executed cannot be revoked to the prejudice of those who have acquired rights under it. (*Com. School Dec.*, 182.)

If the title to a site fails, the designation of a new one is not to be regarded as a change of site. The resolution in such case should recite the fact that the district is destitute of a site, in consequence of its title to one formerly occupied having failed by the termination of a lease, judgment in an action of ejectment, or whatever other circumstance may have brought it to an end.

The majority requisite to a change of site is a majority of those *present and voting*, as ascertained by taking and recording the ayes and noes at a special meeting *called for that purpose*. A district meeting may pass a resolution to change the site without having obtained the supervisor's consent; but such resolution cannot be carried into *effect* until his consent has been given.

It is not enough for him to consent to a removal. He must certify to the necessity of the change.

In a district composed of parts of two towns, both the supervisors must unite in the certificate; if composed of three or more, the case comes under the provision of section 27, title 17, chapter 8, part 3, of the Revised Statutes: "Whenever any power, authority or duty is confided by law to three or more persons, and whenever three or more persons are authorized or required by law to perform any act, such act may be done, and such power, authority or duty may be exercised and performed by a majority of such persons or officers, upon a meeting of all the persons or officers so intrusted or empowered, unless special provision is otherwise made."

The act in this case being of a judicial character, *all* must meet and confer, but a majority may decide. The certificate should state that all met.

§ 21. Whenever the site of a school-house shall have been changed, as herein provided, the inhabitants of a district entitled to vote, lawfully assembled at any district meeting, shall have power, by a majority of the votes of those present, to direct the sale of the former site or lot, and the buildings thereon and appurtenances, or any part thereof, at such price and upon such terms as they shall deem proper; and any deed duly executed by the trustees of such district, or a majority of them, in pursuance

of such direction, shall be valid and effectual to pass all the estate or interest of such school district in the premises, and when a credit shall be directed to be given upon such sale for the consideration money, or any part thereof, the trustees are hereby authorized to take in their corporate name such security, by bond and mortgage or otherwise, for the payment thereof, as they shall deem best, and shall hold the same as a corporation, and account therefor, to their successors in office and to the district, in the manner they are now required by law to account for moneys received by them; and the trustees of any such district for the time being may, in their name of office, sue for and recover the moneys due and unpaid upon any security so taken by them or their predecessors.

Neither the trustees nor the inhabitants have any power to sell land belonging to the district, unless it be the site of a school-house, for which a new one has been substituted

If any credit is to be given upon the sale, the inhabitants in district meetings should, by resolution, specify the exact terms thereof, and should also fix the lowest price to be accepted. When a bond and mortgage are executed, they should run, to "A. B., C. D. and E. F., trustees of school district No. , in the town of , and their successors in office or assigns."

The trustees become personally responsible to the district for the amount bid at the sale as for so much cash received, unless they take a bond and mortgage or some other *security*. This implies some pledge or obligation collateral and in addition to the personal responsibility of the purchaser, such as the signature of a solvent indorser or surety to a promissory note, in accepting which they are responsible for the same care which a prudent person would exercise in taking security for a debt due to himself.

§ 22. All moneys arising from any sale made in pursuance of the last preceding section, shall be applied to the expenses incurred in procuring a new site, and in removing or erecting thereon a school-house, and improving and furnishing such site and house, and their appendages, so far as such application shall be necessary; and the surplus, if any, shall be devoted to the purchase of school apparatus and the support of the school, as the inhabitants at any annual meeting shall direct.

If the money is not necessary to pay for a new site or removing or erecting a school-house, it may be appropriated by the district to any purpose for which it would be authorized to levy a tax; and in the absence of any vote by the district the trustees may appropriate it to any purpose, such as the purchase of

fuel, or the rent of temporary school rooms, for which they are authorized to levy a tax without a vote of the district.

### THIRD ARTICLE.

*Of the qualification, election, choice and terms of office of district and neighborhood officers, and of vacancies in such offices.*

§ 23. No school commissioner or supervisor is eligible to the office of trustee, nor can either be a member of any board of education within his district or town; and no trustee can hold the office of district clerk, collector or librarian.

The reason of these prohibitions may be found in the incongruity of a man's holding two offices by one of which he is subject and responsible to himself in his other capacity. If a supervisor were also trustee, he would as supervisor hold money that he is forbidden to hold as trustee, and could as trustee draw orders on himself as supervisor. There is the same incompatibility between the offices of trustee and collector, or district clerk, or librarian.

§ 24. Every district and neighborhood officer must be a resident of his district and neighborhood, and qualified to vote at its meetings.

See section 11, of this title, for what constitutes residence; and section 12 for the qualification of voters.

Removal from the district will vacate any district office.

As to votes cast for disqualified persons, see comments on the election of district officers under section 16 of this title.

§ 25. From one annual meeting to the next is a year, within the meaning of the following provisions: The term of office of a trustee of a neighborhood and a sole trustee of a district is one year. The full term of a joint trustee is three years, but a joint trustee may be elected for one or for two years, as herein provided. The term of office of all other district and neighborhood officers is one year. Every district and neighborhood officer shall hold his office unless removed, during his term of office, and until his successor shall be elected or appointed.

Persons appointed by the supervisor to fill vacancies in the office of trustee are entitled to hold over until their successors shall be elected, the same as those elected to that office.

§ 26. The terms of all officers elected at the first meeting of a newly erected neighborhood or district, except of a union free school district, shall expire on the second Tuesday of October, next thereafter.

§ 27. On the second Tuesday of October next after the erection of a district, at its first annual meeting, the electors shall determine, by resolution, whether the district shall have one or three trustees, and if they resolve to have three trustees shall elect the three for one, two and three years respectively, and shall designate, by their votes, for which term each is elected. Thereafter in such district, one trustee shall be elected at each annual meeting to fill the office of the outgoing trustee. The electors of any district having three trustees shall have power to decide, by resolution, at any annual meeting, whether the district shall have a sole trustee, or three trustees, and, if they resolve to have a sole trustee, the trustee or trustees in office shall continue in office until their term or terms of office shall expire, and no election of a trustee shall be had in the district until the offices of such trustee or trustees shall become vacant by the expiration of their terms of office or otherwise, and thereafter but one trustee shall be elective for said district.

Any district having three trustees may by resolution passed at any annual meeting vote to have but a single trustee. But, having so determined, the district has no power to resolve again to have three trustees, and any subsequent election of more than one trustee will be illegal. If any districts, in disregard of this section, have elected three trustees, after having resolved to have but one, the question may arise which one of the persons voted for would be the legal trustee. Unquestionably the one first elected in the order of time. Having elected one trustee, and thus having exhausted its power, votes subsequently cast for others are illegal and void. If the three trustees are elected on the same ballot, then the one designated to serve for one year will be the legal and sole trustee.

§ 28. It shall be the duty of the district clerk, and of the neighborhood clerk, or of any person who shall act as clerk at any district or neighborhood meeting, when any officer shall be elected, forthwith to give the person elected notice thereof in writing; and such person shall be deemed to have accepted the office, unless, within five days after the service of such notice, he shall file his written refusal of it with the clerk. The presence of any such



person at the meeting which elects him to office shall be deemed a sufficient notice to him of his election.

When legal notices are required to be given "forthwith," the word has been held to mean "within twenty-four hours."

§ 29. The collector vacates his office by not executing a bond to the trustees, as hereinafter required, and the trustees may supply the vacancy. (*See sec. 83 of this title.*)

§ 30. In case the office of a trustee shall be vacated by his death, refusal to serve, incapacity, removal from the district or neighborhood, or by his being removed from the office, or in any other manner, and the vacancy be not supplied by a district or neighborhood meeting within one month thereafter, the supervisor of the town within which the school-house or principal school-house of the district is, or within which the neighborhood or any part thereof is, may, by a writing under his hand, appoint a competent person to fill it.

The power of the supervisor under this section, and of trustees under section 32, to fill vacancies, is confined strictly to vacancies resulting from the causes above specified. They are not to assume to set aside an election on the ground of a legal incapacity existing at the time, and which the voters disregarded. They must, from the necessity of the case, adjudicate upon the question of fact whether a vacancy exists, and, in the written order making an appointment, should expressly state the facts which have caused a vacancy.

A refusal to serve is not the defective performance or omission of a particular act, but a general non-performance of the duties of the office. (6 *Cowen*, 479.)

§ 31. A trustee who publicly declares that he will not accept or serve in the office of trustee, or who refuses or neglects to attend three successive meetings of the board, of which he is duly notified, without rendering a good and valid excuse therefor to the other trustees, or trustee, where there are but two, vacates his office by refusal to serve.

§ 32. Any vacancy in the office of district clerk, collector, or librarian, may be supplied by appointment under the hands of the trustees of the district, or a majority of them, and the appointees shall hold their respective offices until the next annual meeting of the district, and until others are elected and take their places.

Under this section, and by the last sentence of section 25, if the annual meeting passes by without an election, all the officers of the district, whether holding

by election or appointment, will legally retain office until their successors are elected, or appointed and take their places. At any annual meeting, or at any special meeting duly assembled, persons may be elected in place of those thus holding over. If, however, a vacancy has been filled by appointment, as provided in section 30, there will be none for a meeting to fill.

§ 33. Every appointment to fill a vacancy shall be forthwith filed by the supervisor or trustees making it in the office of the district clerk, who shall immediately give notice of the appointment to the person appointed.

§ 34. Every person chosen or appointed to a school district office, who, being duly qualified to fill the same, shall refuse to serve therein, shall forfeit five dollars; and every person so chosen or appointed, who, not having refused to accept the office, shall willfully neglect or refuse to perform any duty thereof, shall by such neglect or refusal vacate his office, and shall forfeit the sum of ten dollars. These penalties are for the benefit of the common schools of the town. (*See sec. 22, of title 3.*)

The law regards every person as under an obligation to bear his part in the burden of personal service to the public, or to indemnify it by a fine. Mere unwillingness to abstract the necessary time from the labors of his ordinary calling is not a sufficient cause; it is for him to determine whether the payment of the fine, or the injury to his business, or love of ease, will be the greater damage, and to meet the one or the other according to his election. The presumption is that, if sufficient cause existed, the supervisor would have accepted the resignation of the officer who is sued; and it lies upon him to show the cause, not upon the plaintiff to disprove the existence of any.

It is for the tribunal before which any delinquent officer is tried to determine whether the refusal or neglect to serve was willful.

§ 35. But the supervisor of the town wherein any such person resides may accept his written resignation of the office, and the filing of such resignation and acceptance in the office of the district clerk shall be a bar to the recovery of either penalty in the last preceding section mentioned; or such resignation may be made to and accepted by a district meeting.

Where a district meeting accepts the resignation of any school officer, it is not necessary to file a written resignation with the district clerk. The records of the meeting will be sufficient evidence of the fact.

## FOURTH ARTICLE.

*Of the duties of the neighborhood clerk, and of the district clerk and librarian.*

§ 36. The neighborhood clerk shall keep a record of the proceedings of his neighborhood, and of the reports of the trustees, and deliver the same to his successor. In case such neighborhood shall be annexed to a district within the State, its records shall be filed in the office of the clerk of such district.

§ 37. It shall be the duty of the clerk of each school district:

1. To record the proceedings of his district in a book to be provided for that purpose by the district, and to enter therein true copies of all reports made by the trustees to the school commissioner;

2. To give notice, in the manner prescribed by the sixth section of this title, or by the inhabitants, pursuant to such section, of the time and place of holding special district meetings called by the trustees;

3. To affix a notice in writing of the time and place of any adjourned meeting, when the meeting shall have been adjourned for a longer time than one month, in at least four of the most public places of such district, at least five days before the time appointed for such adjourned meeting;

4. To give the like notice of every annual district meeting;

5. To give notice immediately to every person elected or appointed to office of his election or appointment; and also to report, to the town clerk of the town in which the school-house of his district is situated, the names and post-office address of such officers, under a penalty of five dollars for neglect in each instance;

6. To notify the trustees of every resignation duly accepted by the supervisor;

7. To keep and preserve all records, books and papers belonging to his office, and to deliver the same to his successor. For a refusal or neglect so to do, he shall forfeit fifty dollars for the benefit of the district, to be recovered by the trustees;

8. In case his district shall be dissolved, to obey the order of the commissioner or commissioners as to depositing the books, papers and records of his office in the town clerk's office;

9. To attend all meetings of the board of trustees when notified, and keep a record of their proceedings in a book provided for that purpose;

10. To call special meetings of the inhabitants whenever all the trustees of the district shall have vacated their office.

The importance of full and accurate records has been sufficiently discussed in the comment upon subdivision 9, of section 16, under the heading of the power of taxation. A clerk who discharges his duty in this respect with neatness and fidelity will have an honorable memorial of himself to endure as long as the district exists. The entering of copies of the reports, annually made by the trustees to the school commissioner, is of consequence to preserve the history of the district affairs, and to afford the means of comparison with the annual accounts presented by the trustees to the district meeting.

Too great care cannot be exercised in giving ample notice of every special meeting. The clerk is authorized to give such notices upon a verbal direction of the trustees; but there can be no excuse for the omission to put those directions in writing, upon the records, either in the form of an order or of minutes of the proceedings of a meeting of the trustees. In the personal service of notice, the clerk cannot act by deputy; but no objection is perceived to his employing an agent to leave written notices at the houses of those whom he may find absent from home. The proper course, however, would be for the clerk to provide himself with a sufficient number of written notices before starting upon his rounds. In this way he would secure the giving of notice at the earliest practicable time, and would avoid the trouble of obtaining any other evidence of service than his own official return. The clerk is not at liberty to post notices of annual or adjourned meetings at any less number of public places than *four*. It would be well for him to have at least four places designated by a resolution of the inhabitants as the most public and proper for posting notices. In case of an adjourned meeting, it would be prudent to repeat in the notices posted the enumeration of the objects for which it was originally called.

Section 6 of this title declares by whom notices may be given, and upon whom they shall be served; and the manner of service is prescribed in the second section. The people, by resolution adopted at an annual meeting, may decide how such notices shall be given, and such resolution will be binding upon the clerk until rescinded or modified.

It is believed that the clerk, who, by subdivisions 1 and 7, is directed to record the proceedings of district meetings, and of meetings of the trustees in a book, may purchase such books, even if the people neglect or refuse to vote a tax for that purpose, and that the expense will be a charge upon the district. Duties are imposed upon him which he cannot discharge without the necessary books.

§ 38. The librarian, subject to the provisions of this act, shall have the charge and supervision of the district library.

## FIFTH ARTICLE.

*Of the pupils and teachers.*

§ 39. Common schools in the several school districts of this State shall be free to all persons over five and under twenty-one years of age residing in the district, as hereinafter provided; but non-residents of a district, if otherwise competent, may be admitted into the school of a district, with the written consent of the trustees, or of a majority of them, upon such terms as the trustees shall prescribe.

The language of this section is substantially that of the free school law of 1849, with the exception of the words "as hereinafter provided," which qualifying phrase was inserted in section 1, chapter 151, Laws of 1851, and it was thereafter provided that the schools should not be any more free than they had been prior to 1849.

The abolition of the rate bill, and the increase of the State tax, by chapter 406, Laws of 1867, has made true for the first time the words of the statute, and given them a living spirit. Henceforth the highway of knowledge will be free and open to all travelers, yielding obedience only to the rules of the road.

The power to admit non-resident children to the schools of a district is vested exclusively in its trustees. Pupils are not to be encouraged to withdraw from the schools of their own districts. By doing so, they enfeeble its pecuniary resources, and diminish the inducements of their parents and friends to exert their influence to maintain a good school in their own district. A teacher, moreover, ought not to have the additional labor thrown upon him of instructing non-residents, without his compensation being increased, unless he entered into his contract with full knowledge of the number he was to instruct.

The right to enjoy the benefit of common schools, established for all the inhabitants, is, as is well put in 8 *Cush. (Mass. R.)*, 164, "a common, not an exclusive personal right; then, like other common rights, that of way for instance, it must be exercised under such limitations and restrictions that it shall not interfere with the equal and co-extensive rights of others. Take the case of contagious disease: Can it be doubted that the presence of a pupil infected could be lawfully prohibited, not for any fault or crime or wrong conduct, but simply because his attempt to insist on his right to attend, under such circumstances, would be dangerous and noxious, and so an interruption of the equal and common right?" In that case, the court held that the trustees have the right to exclude a child for open, gross immorality, manifested by licentious propensities, language, manners and habits, though not manifested by acts of licentiousness or immorality within the school, deeming it "as necessary, in the unreserved intercourse of pupils of the same school, as well without as within its precincts, to preserve the pure minded, ingenuous

and unsuspecting children of both sexes from the contaminating influence of those of depraved sentiments and vicious propensities and habits, as from those infected with contagious diseases."

The analogy suggests the rule. Children may be excluded, not for punishment merely, but for the protection of others from such injurious example and influence as would entirely defeat the purposes for which schools are instituted. It is to be remembered that among the objects of instruction is not only to deter from vice, but to reclaim those who are capable of reformation, and to correct bad habits which may result from parental neglect, or, what is more deplorable, from parental example. To deal gently with the erring, and especially with erring childhood, is the dictate of humanity, policy and duty. To abandon them to their evil courses is a step involving the most serious responsibility, never to be taken until remonstrance and persuasion have been exhausted.

Such violent insubordination against reasonable and proper regulations of the school as to render it impossible to maintain necessary discipline and order will justify the trustees in the expulsion of a pupil; but it is their duty to see, before resorting to the final extremity, whether there may not be fault on the side of the teacher as well as the pupil, and to endeavor, in such case, to reconcile the difference, without impairing the self-respect of either party. Children have rights as well as their elders; they are as keenly sensible of oppression, and naturally revolt against power, wantonly exercised for the sake of exhibiting itself. Being the weaker party, they suffer in their school days a great deal of injustice and often of outrage. The best of teachers have human infirmities, and it is an incident of their trying calling to aggravate them. It is for the trustees to temper power with benignity, and administer justice in the spirit of tolerance and mercy.

§ 40. If a school district include a portion of an Indian reservation, whereon a school for Indian children has been established by the Superintendent of Public Instruction, and is taught, the school of the district is not free to Indian children resident in the district or on the reservation, nor shall they be admitted to such school except by permission of the Superintendent.

The Indian race has never been recognized by law as entitled to the rights and privileges of citizenship. They have asserted their nationality, and the State and United States have treated with them as with independent tribes or nations. They are aliens on their native soil. They are permitted to reside on what are called reservations of land which has been sold, subject to their occupancy, to purchasers who are tempted to use various arts to turn their right of reversion into possession. They are the wards of the State, which has made ample provision for their education.

§ 41. No teacher is a qualified one, within the meaning of this act, unless he possesses an unannulled diploma granted to him by

the State normal school, or an unrevoked and unannulled certificate of qualification given to him by the Superintendent of Public Instruction, or an unexpired certificate of qualification given to him by the school commissioner within whose district he is employed, or by the school officer of the city or village in which he is employed, authorized by special act to grant such certificate.

Before employing a teacher, the trustees should insist upon the exhibition to them of a certificate from one of the authorities named in this section. They must also be careful to inquire whether the certificate exhibited is in force. School commissioners and local officers can grant certificates only for limited terms. A diploma from the State normal school, or a certificate from the State Superintendent is good until revoked, or annulled. By reference to the law of 1863, establishing the Oswego normal and training school, and to the laws of 1866 and 1867, establishing other normal schools, it will be seen that a diploma from any State normal school makes the holder a qualified teacher.

§ 42. No part of the school moneys apportioned to a district can be applied or permitted to be applied to the payment of the wages of an unqualified teacher; nor can his wages, or any part of them, be collected by a district tax.

If an unqualified teacher be employed, the school kept will be a private, and not a public school, and the teacher's claim for compensation will depend upon his contract with his employers. If the trustees agree to pay him, they will be responsible as private persons, and not as officers of the district. If the trustees draw any order upon the supervisor, or on the collector of the district, for such money, in favor of an unqualified teacher, they incur the penalty provided in the next section.

§ 43. Any trustee who applies, or directs, or consents to the application of any such money to the payment of an unqualified teacher's wages, thereby commits a misdemeanor; and any fine imposed upon him therefor shall be for the benefit of the common schools of the county. (*See sec. 22, of title 3.*)

§ 44. Teachers shall keep, prepare and enter, in the books provided for that purpose, the school lists and accounts of attendance hereinafter mentioned, and shall be responsible for their safe keeping and delivery to the clerk of the district at the close of their engagements or terms. (*See sec. 53 of this title.*)

## SIXTH ARTICLE.

*Of the trustees, their powers and duties ; and herein of school taxes and annual reports.*

§ 45. All property which is now vested in, or shall hereinafter be transferred to, the trustee or trustees of a district, for the use of schools in the district, shall be held by him or them as a corporation.

The original provision of the act of 1819, section 29, chapter 161, from which the above is taken, was enacted for the purpose of vesting in the trustees property which had been dedicated or granted for school objects before its passage. The principal incidents of a corporation are to have perpetual succession and existence by its corporate name, where no period is limited by its charter, and the capacity to hold real and personal estate for its corporate purposes, as an artificial body, wholly distinct from the individuals who from time to time may compose it.

§ 46. A sole trustee of the district shall have all the powers, and be subject to all the duties, liabilities and penalties conferred and imposed by law upon or against any trustee or trustees, or the majority of the trustees, of a district.

§ 47. The trustees of a district compose a board, and when two only meet to deliberate upon a matter, and the third, if notified, does not attend, or the three meet and deliberate thereon, the conclusion of two upon the matter, and their order, act or proceeding in relation thereto, shall be as valid as though it were the conclusion, order, act or proceeding of the three; and a recital of the two in their minute of the conclusion, act or proceeding, or in their order, act or proceeding, of the fact of such notice, or of such meeting or deliberation, shall be conclusive evidence thereof. A meeting of the board may be ordered by any member thereof, by giving not less than twenty-four hours' notice of the same.

Every power committed to the trustees must be exercised by the board. This section was incorporated into the law of 1864, to obviate the difficulty often experienced of obtaining a meeting of all three trustees when any important business was to be done. When they are duly assembled, a majority may do any lawful act, make any order, or decide any question properly before them. If one of them, after due notice of a meeting absent himself, the other two may act just the same as if he were present.

But the board must meet. It will not do for one or two to form a determination and then procure the assent of the absent. The decision of a majority, or



of all three, under such circumstances, is *not* the decision of the trustees, any more than the concurrent opinion of all the members of the Legislature arrived at by taking their separate votes at their respective places of residence is an act of the Legislature. In the assessment of a tax, and in general in regard to every other duty judicial in its character, this rule is inflexible.

In other cases a majority may decide, provided all have been notified of the intention to meet and confer upon the subject at a definite time and place. This rule was applied in 16 *Maine R.*, 185, and the dismissal of a teacher by two, a majority of the board, held illegal, because the third was not notified, although he was out of town. The court say: "That does not allow the majority to dispense with the rule requiring notice. They are not in such cases constituted the judges whether the notice would be effectual to secure his attendance. Nor would it be entirely safe to intrust them with such a power, as it would afford an opportunity to select an occasion when they might judge that a notice would be ineffectual, and thus, by neglecting to give it, free themselves from the presence of a dissenting minority. It may often happen that those will be able to attend who were believed to be so situated that their attendance could not be expected. Nor is there any difficulty in giving the requisite notice in such cases, as one left at the usual place of residence would be sufficient." -

The law goes upon the supposition that a majority may be convinced by a minority and change its determinations, and therefore will not suffer the majority to act without giving the minority a notice to participate. The legal presumption is that officers have thus acted, but this presumption may be repelled by evidence to the contrary.

The case last cited admits that a merely ministerial duty, the execution of a determination of the board, may be performed by a single trustee.

In case of a vacancy in the office of trustee, those in office, whether two or one, possess all the powers of a full board; the very first act, however, ought to be the call of a meeting to fill the vacancy.

§ 48. While there is one vacancy in the office of trustee, the two trustees have all the powers and are subject to all the duties and liabilities of the three. And while there are two such vacancies, the trustee in office shall have all the powers and be subject to all the duties and liabilities of the three, as though he were a sole trustee.

§ 49. It shall be the duty of the trustees of every school district, and they shall have power:

1. To call special meetings of the inhabitants of such districts whenever they shall deem it necessary and proper;
2. To give notice of special, annual and adjourned meetings in the manner prescribed in the sixth section of this title, if there be

no clerk of the district, or he be absent or incapable of acting, or shall refuse to act ;

3. To make out a tax list of every district tax voted by any such meeting, or authorized by law, containing the names of all the taxable inhabitants residing in the district at the time of making out the list, and the amount of tax payable by each inhabitant, set opposite to his name ;

4. To annex to such tax list a warrant, directed to the collector of the district, for the collection of the sums in such list mentioned ;

5. To purchase or lease a site for the district school-house or school-houses, as designated by a meeting of the district, and to build, hire or purchase such school-house as may be so designated, and to keep in repair and furnish such school-house with necessary fuel and appendages, and to pay the expense thereof by tax, but such expenses shall not exceed fifty dollars in any one year, unless authorized by the district or by law ;

6. To have the custody and safe keeping of the district school-house or houses, their sites and appurtenances ;

7. When thereto authorized, by a meeting of the district, to insure the school-house or school-houses, and their furniture, and the school apparatus, in some company created by or under the laws of this State, and to comply with the conditions of the policy, and raise the premiums by a district tax ;

8. To insure the district library in such a company in a sum fixed by a district meeting, and to raise the premium by a district tax, and comply with the conditions of the policy ;

9. To contract with and employ all teachers in the district school or schools ; but no person who is within two degrees of relationship by blood or marriage to any such trustee shall be so employed, except with the approval of two-thirds of the voters of such district present and voting upon the question at an annual or special meeting of the district. Any person employed in disregard of the foregoing provision shall have no claim for wages against the district, but may enforce the specific contract made against the trustee or trustees consenting to such employment as individuals ;

10. To pay toward the wages of such teachers as are qualified, the public moneys apportioned to the district and legally applicable thereto, by giving them orders on the supervisor therefor, and to collect, as herein provided, the residue of such wages by district tax ;

11. To divide such public moneys apportioned to the district, whenever authorized by a vote of their district, into two or more portions for each year; to assign and apply one of such portions to each term during which a school shall be kept in such district, for the payment of teachers' wages during such term; and to collect the residue of such wages not paid by the proportion of public money allotted for that purpose, by district tax as herein provided;

12. If the library money apportioned to the district be less than three dollars, to apply it to the payment of teachers' wages;

13. To draw upon the supervisor for the school and library moneys, in the manner and form prescribed by subdivisions one and two of section six of title four of this act;

14. After having paid toward the wages of such teachers as are qualified the public moneys of the district legally applicable thereto, by giving them orders on the supervisor therefor, to collect the residue of such wages by a district tax, or, if the same shall have been already collected, to give such teacher an order on the district collector for the balance of his or her wages still remaining unpaid.

1. *To call special meetings of the inhabitants of such districts whenever they shall deem it necessary and proper.*—This power should be liberally exercised for the benefit of the district; and the trustees should call special meetings whenever requested for any legal object by a respectable number of the inhabitants, notwithstanding the trustees may themselves be opposed to the object. If the inhabitants have repeatedly acted upon a subject in such a manner as to show that their determination has been definitively formed, and is not likely to be altered, it is not the duty of the trustees to be made the instruments of a factious minority, by harassing them with calls to reconsider the matter. But except in such case, or when the purpose is clearly illegal, it is very much a matter of course that a meeting should be ordered by the trustees, or, in case of their refusal, by the State Superintendent. Application to him for this purpose must be upon notice to the trustees, in the manner and form of an appeal from their refusal.

It is no objection to the call of a special meeting that a meeting having the same subject under consideration stands adjourned. (7 Metc., 509.)

2. *To give notice of special, annual and adjourned meetings in the manner prescribed in the sixth section of this title, if there be no clerk of the district, or he be absent or incapable of acting.*—This is a ministerial duty, which may be performed by one of the trustees, under a resolution of the board, or they may divide the district into sections, assigning the duty of giving the notice in each to one of their number. This power should be exercised by them in the case of a refusal of the clerk to give a notice. It is believed they may in such case delegate the ministerial duty to any inhabitant, furnishing him with a written authority,

under their hands, which can be exhibited to the inhabitants whom he personally notifies, and with written notices, *signed by the trustees*, to be left at the houses of those whom he may find absent from home.

3. *To make out a tax list of every district tax voted by any such meeting, or authorized by law, containing the names of all the taxable inhabitants residing in the district at the time of making out the list, and the amount of tax payable by each inhabitant set opposite to his name.*—In 4 *Denio*, 125, the supreme court held a warrant void where one of the trustees made out a tax list, and took the list and warrant to a second, who signed, but the other trustee was not consulted. In 3 *Denio*, 598, the court held an assessment void which was made and signed by two assessors, the third being present in the room where it was made, but not being consulted or taking any part in the business. This fact was permitted to be shown by the evidence of one of the assessors who acted, to repel the legal presumption that all had been consulted. The decision was affirmed by the court of appeals. (1 *Comst.*, 79.)

The trustees should meet for the purpose of making out a tax list within ten days after the meeting at which the tax is voted, so that if it be necessary to resort to any other evidence than the last town assessment roll for the valuation of property, or if a reduction shall be claimed, they may give twenty days' notice, and complete the tax list at the expiration of thirty days after the district meeting. It would be well for them to give notice at the district meeting of the time and place at which they will meet to make a tax list, so that any inhabitant conceiving himself entitled to reduction may appear and be examined on oath in regard to it. The mode of proceeding in arriving at valuation and making the roll will be treated more at large in the comments upon a succeeding section. It is proper to remark here that the heading of every tax list should specify for what purposes and under what authority every sum included therein is levied. Whenever any controversy is anticipated in regard to any tax, it should be made on a separate list from others voted at the same meeting, so as not to embarrass or delay the collection of that which is undisputed.

4. *To annex to such tax list a warrant, directed to the collector of the district, for the collection of the sums in such lists mentioned.*—The form of a warrant will be given in another place. The supreme court (18 *Barb.*, 331) have stated it as "remarkable that the school laws, as they now stand, contain no provision limiting or directing the time within which the warrant shall direct the collector to collect or return the warrant." It is, however, clearly contemplated by the statute that the warrant shall mention a time within which it is to be executed, and the practice has been to fix it at thirty days, which was the period fixed by section 100, chapter 480 of 1847, prior to the amendment made by section 5, chapter 382 of 1849. It is better to conform to that practice than to fix any other period, unless in a case where it is palpable that an immediate collection is unnecessary, and the convenience of the tax payers is to be greatly promoted by a brief extension.

5. *To purchase or lease a site for the district school-house or school-houses, as designated by a meeting of the district, and to build, hire or purchase such school-house as may be so designated, and to keep in repair and furnish such school-house with neces-*

*sary fuel and appendages, and to pay the expense thereof by tax, but such expense shall not exceed fifty dollars in any one year, unless authorized by the district or by law.*— This power is necessarily exclusive. A practice has grown up in some quarters of appointing a building committee by the district meeting to superintend the erection of a school-house. So far as a building committee act in aid of the trustees, by their advice and personal service in carrying into execution the wishes of the inhabitants, under the direction of the trustees, there is no objection. But the trustees alone have the power to bind the district by a contract, written or verbal, and the district cannot supersede them by a building committee or any other agents. It is in the power of the inhabitants, through the agency of a committee or otherwise, to procure plans and specifications, to the minutest detail, for a school-house or other mechanical structure in contemplation. They may in district meeting select among those thus procured, and may, by the resolution authorizing the building, limit the power to making a contract according to the plan and specifications adopted. This is the only method of controlling the discretion of the trustees in the matter. It rests with the trustees to accept or reject the work, unless the inhabitants, in the vote authorizing the building, have appointed or provided for the appointing of other arbiters. This they may do, by directing it to be inserted in the contract with the builder that the sufficiency of the materials and workmanship under the contract shall be determined by persons named in the resolution, with the power to determine what sum shall be deducted as damages from the contract price, or to reject it wholly; or by nominating in the resolution an arbitrator on the part of the district, and requiring the builder to nominate another, with power to the two to choose an umpire in case of disagreement, such arbitrators to assess damages or reject the work entirely, and securing to the trustees in the latter case the right to remove the building from the site at the expense of the builder, unless he removes it himself upon notice to do so.

A stringent contract, which should in all cases be in writing, with such provisions for the summary adjustment of any questions which may arise under it, will relieve the trustees from much personal responsibility and trouble, as well as protect the district from quarrels and litigation, which in any event are disastrous.

6. *To have the custody and safe keeping of the district school-house or houses, their sites and appurtenances.*—The trustees are charged with the custody of the school-house for the purpose of public instruction; and it is their duty to exercise such a general supervision over its care and management that the instruction of the pupils in the school shall not be embarrassed by any use of the house other than for school purposes, and that the property of the district, and the furniture, books and papers belonging to the school or the pupils, shall not be destroyed or injured. Any use of the house in subordination to these restrictions, and not inconsistent with the main purposes for which it was designed, may be allowed by the trustees, or either of them, under authority of section 52 of this title, which was passed to prevent the disputes continually arising about the right and power of the trustees to permit the school house to be used for any purpose but a common school. Whenever the

trustees do permit the house to be used for instruction in music, or for lectures, or for any other educational purpose, it would seem to be the duty of the trustees to require such a remuneration for the use as may be sufficient to clean the rooms, and to indemnify the district against casual damage and wear. There is no good reason why the expenses of the district should not be lightened by the trifling revenue derivable from the occasional use of its house, when not wanted for school purposes, and in a manner not to interfere with them. The trustees, however, cannot make any permanent contract for the occupation of the school-house. They can simply give a license, revocable at their own discretion, which they cannot by contract foreclose themselves from exercising as the public good may require at any moment. Strictly speaking, under section 52, they can grant no *right* to use the district property for any other than educational purposes; they can only by their acquiescence estop themselves from bringing an action for the act of entering the school-house, which would otherwise be a trespass. Nothing should be tolerated which may give occasion to a controversy among the inhabitants.

As the custody of the building is vested in all the trustees, all have the right of visiting and inspecting it at all times, and a majority of the trustees cannot exclude the third.

Either of the trustees may prevent the school-house from being used for any purpose, except the common school, by forbidding the others to give their consent to such use.

*7 and 8. To insure the school-house, or houses, and their furniture and school apparatus, and to insure the district library.*

The direction to insure should be by a resolution passed at a regular meeting of the inhabitants.

The company must be one incorporated under the laws of this State.

The insurance once made the trustees may raise a tax for the annual premium, when it becomes due, or may add the amount to any other tax list.

*9. To contract with and employ all teachers in the district school or schools; but no person who is within two degrees of relationship by blood or marriage to any such trustee shall be so employed, except with the approval of two-thirds of the voters of such district present and voting upon the question at an annual or special meeting of the district.*—Any person employed in disregard of the foregoing provision shall have no claim for wages against the district, but may enforce the specific contract made against the trustee or trustees consenting to such employment as individuals.

The power to contract for the district is a power to contract with such teachers only as the law authorizes the inhabitants to expect, teachers to the payment of whose wages public money may be applied, that is, teachers possessing, at the time of making the contract, a regular and valid certificate of qualification. The inhabitants have no power to engage nor to discharge a teacher. It is a fraud upon the inhabitants to engage a teacher not then possessing a certificate, without express notice to them that until he shall obtain one the school is to be in effect a *private* school. It is difficult to find any principle upon which the trustees can be authorized, by any *official* action, to provide for the payment of

such a teacher. In the mean time the only mode for trustees to secure themselves against a dangerous personal responsibility is to meet as a board and insist upon the actual production of a certificate before contracting with a teacher.

A practice has prevailed to a very considerable extent of trustees engaging with a teacher that he shall board with the parents of the children alternately. There is no authority for such a contract, and it cannot be enforced on the inhabitants. This compulsory boarding gives occasion to constant altercation and complaint, which often terminates in breaking up the school. The best arrangement is to give the teacher a specific sum as wages and let him board himself. If, however, some persons are willing to board a teacher gratuitously, and thereby save the district from taxation, there can be no objection.

The amount of the compensation to be paid to teachers is within the discretion of the trustees exclusively. The inhabitants have no power to control them in this respect, nor in the selection of the individuals to be employed, though the trustees would act most unwisely in disregarding their preferences and wishes, when reasonable and just. There is little danger that they will abuse their discretion in making the compensation too high. The wages of teachers are generally quite inadequate, those of females scandalously so. It is a reproach to our civilization that a woman should earn less as a teacher than she might in a cotton mill or as a dressmaker, especially as the qualities of her sex admirably adapt her for the instruction of the young. Trustees may be very certain that in purchasing the services of a teacher, as in every other business transaction, the way to get a good article is to offer a fair price, and that the most wretched economy in the world is to employ a poor teacher. They would grudge no price to secure a skillful physician to restore the bodily health and vigor of their own children. They would never commit a watch to a bungler, because he offered to tinker at it for slender pay; what right have they to deal more stingily in selecting and paying the person who is to deal with an organization so much more delicate and intricate than a watch, as the minds and souls of the children of an entire community, and through whose ignorance or error they may imbibe poison instead of nutriment or medicine?

The following is suggested as a proper form for a contract to be drawn up in duplicate, one copy to be filed with the district clerk, the other retained by the teacher, viz.:

A. B., having produced to the trustees of District No. \_\_\_\_\_, in the town of \_\_\_\_\_, a certificate (or diploma of normal school) found in due form to license him to teach a common school in said district (as first assistant or in the primary department, as the case may be, if the certificate is limited), is hereby engaged for the term of \_\_\_\_\_ weeks, provided his certificate shall so long continue in force, to instruct the school of said district \_\_\_\_\_ hours in each day, exclusive of Sundays, Saturdays and customary holidays, and the time he may spend in attendance on teachers' institutes, for the wages of \_\_\_\_\_ dollars per week.

The said A. B. faithfully performing his duties as such teacher, the trustees engage to exercise their legal powers in providing for the payment of his

wages aforesaid, by giving him orders on the supervisor (monthly, or as may be agreed) to the amount of \_\_\_\_\_, (so much of the public money appropriated to the term as may be apportioned to the teacher upon a fair division thereof among all the teachers employed at the same time) for his whole term of service, and in proportion for a less time, and at the expiration of the term, upon being furnished by said teacher with evidence that he has properly kept the register of attendance of the pupils, and that he has verified the correctness of his registration by his oath, and delivered the register to the district clerk to make out a tax list for the collection of the residue of his wages, providing there be not money enough applicable to the payment of teachers' wages in the hands of the collector, and to give him an order on the collector therefor.

Where a teacher was employed by one of the trustees only, after consulting the others separately, and all three of the trustees sent children to the school, as did the district generally, it was held by the supreme court (15 *Barb.*, 323) that having performed the agreement on her part, she was entitled to recover the compensation, on the ground that the action was brought on an *executed* contract, and "that where a person is employed for a corporation by one assuming to act in its behalf, and goes on and renders the services according to the agreement, with the knowledge of its officers and without notice that the contract is not recognized as valid and binding, such corporation will be held to have sanctioned and ratified the contract. \* \* Where the contract is still executory, and nothing has been done under it, and the action is to recover damages merely for non-performance, it is for the plaintiff to show a legal contract binding upon the corporation. But this is not that case."

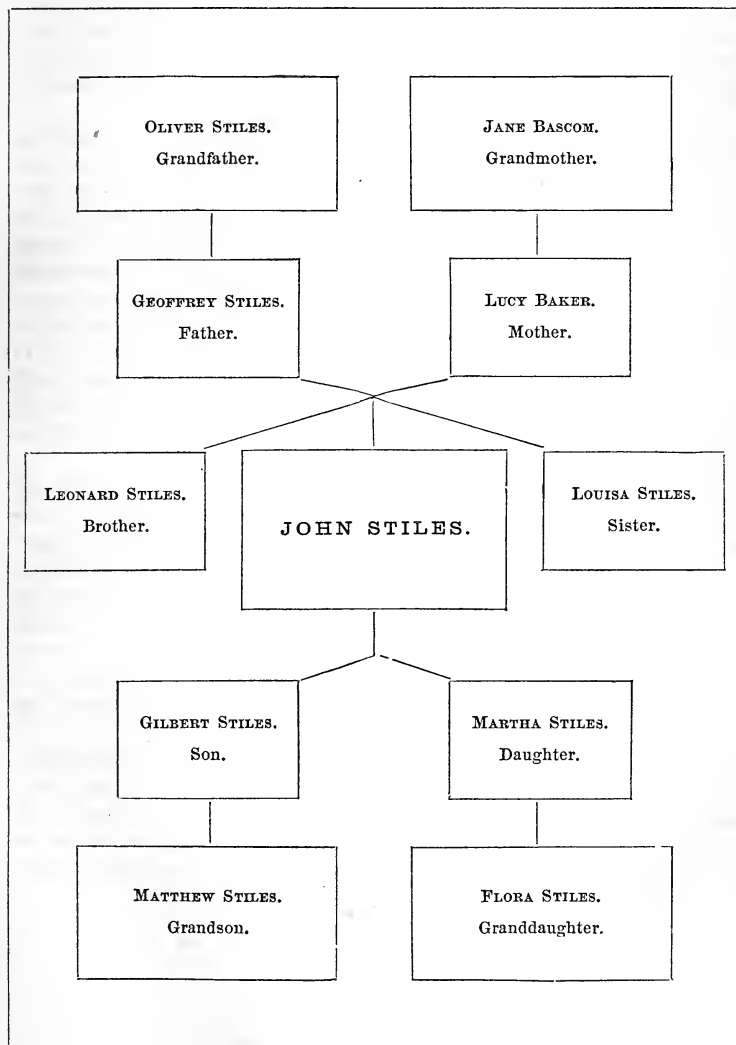
This is sufficient for the teacher while the consent lasts; but the difficulty in respect to the trustees is, that those who have given their consent in this irregular manner may revoke it, and leave the one who made the contract personally liable to damages, without any claim to be indemnified by the district.

A teacher once employed cannot be dismissed, without some violation of the contract on his part, during the time for which it was to continue. A teacher who is so unfortunate as to fail to give satisfaction to the inhabitants is still entitled to retain his place, unless it is forfeited by positive misconduct, such as amounts to a breach of the contract, or would justify the annulling of his certificate.

In the employment of teachers, the trustees, besides requiring the legal qualifications, must also inquire into the legal disabilities of the candidate. They cannot hire a teacher standing toward themselves in the second degree of relationship by blood or marriage. By our laws, in calculating the degree of relationship, the count is made of all the generations between the two persons whose relationship is sought. This is according to the civil law.



In the following table, you desire to know the relationship between John Stiles and his grandfather or grandmother. You count one, two, and find them in the second degree. Between John Stiles and his grandson or granddaughter it is the same, and the same between him and his brother. The relationship between Flora Stiles, granddaughter, and Matthew Stiles, grandson, is in the fifth degree. Such is the rule in New York.



In the foregoing table we will suppose John Stiles to be trustee. It will be seen that he cannot hire, as a teacher, his father nor grandfather, his son nor his grandson, nor the wife of either of them ; his mother nor his grandmother, his daughter nor his granddaughter, nor the husband of either of them ; nor his brother nor brother's wife, nor his sister nor sister's husband, for each of these persons is related to him in the first or second degree.

Every trustee, when about to hire a teacher, must put himself in the place of John Stiles, and then count two degrees from himself in the ascending or descending line, and all who come within that count are within the prohibition ; all beyond it he may hire. For instance, he may hire his nephew or niece, his uncle or his aunt, the brother or sister of his brother's wife, or the brother or sister of his daughter's husband.

This prohibition may be waived by the district. If, for reasons satisfactory to the inhabitants, they are willing that the trustees may employ a person within the prohibited degree of relationship, they may, by a vote of two-thirds of the voters present and voting at the meeting, grant them dispensation. There may often be excellent reasons found, in the superior qualifications of some persons, why the trustees should be released from the obligation of this law.

10. *To pay toward the wages of such teachers as are qualified, the public moneys apportioned to the district, and legally applicable thereto, by giving them orders on the supervisor therefor, and to collect, as herein provided, the residue of such wages by district tax.*

It will be observed that this power is confined in express terms to the payment of *qualified* teachers. "Any trustee who applies, or directs or consents to the application of any such money to the payment of an unqualified teacher's wages, thereby commits a misdemeanor ; and any fine imposed upon him therefor shall be for the benefit of the county." The public money apportioned for the year is to be exhausted in paying the teachers for services rendered *during that year*. The year ends with the 30th of September, and the whole of the public money of the year should be earned, and orders for it drawn on or before that day.

The public money apportioned for teachers' wages can be applied to no other purpose whatever, and therefore an order drawn upon the supervisor should show upon its face that it is in compliance with the statute. The form may be as follows :

To J. D., supervisor of the town of \_\_\_\_\_ :

Pay to A. B., or order, \_\_\_\_\_ dollars \_\_\_\_\_ cents, on account of wages earned by him when duly qualified as a teacher in district No. \_\_\_\_\_, in said town, between the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_ .  
 Dated \_\_\_\_\_, 18 \_\_\_\_ .

E. F., }  
 C. D., } *Trustees*  
 G. H., } *Dist. No. \_\_\_\_ .*

The wages of a teacher include the whole compensation allowed him for board, lodging, or any other object. In drawing an order any sum allowed for board, etc., should be denominated wages. The order can be drawn only in favor of the teacher. If he desires to apply the proceeds to the payment of a private debt, for board or other consideration, he can indorse it to his creditor, but it is for him and not for the trustees to distribute his wages.

Every teacher should be paid promptly at the close of his term. All that the trustees can lawfully require is a fulfillment of his contract, which may include the duty of keeping the teacher's register, and list of daily attendance. When he has placed them, duly verified, in the hands of the clerk of the district, he can demand an order for his wages.

If the inhabitants, as they have power to do, vote a tax at the annual meeting, to pay the residue of the teacher's wages, after the application thereto of so much of the public money as may be set apart for the term, then the trustees can be always in funds. There is no reason why the tax list should not be made out, and the money collected, and in the hands of the collector, ready to pay any order as soon as drawn.

11. *To divide the public moneys apportioned to the district, whenever authorized by a vote of their district, into two or more portions for each year; to assign and apply one of such portions to each term during which a school shall be kept in such district, for the payment of teachers' wages during such term, and to collect the residue of such wages not paid by the proportion of public money allotted for that purpose by district tax, as herein provided. Where the inhabitants have not made a division of the public money by resolution, the trustees have the power to make such division as they deem just and expedient.*

The statute authorizes the people at a duly assembled meeting to divide the year into as many terms as they please, and to direct what portion of the public money shall be applied to each term. As any deficiency is hereafter to be made good by a district tax, it is of less consequence than formerly that it should be divided.

The amount of public money, under the amended law, will nearly pay the wages of a good teacher in every district in the State for a term of twenty-eight weeks. It is to be hoped that the districts in the country will emulate the cities, and vote money enough to keep open their schools for at least ten months in each year.

The public moneys payable on the order of the trustees are the moneys in the hands of the supervisor, apportioned from the State treasury, and the income of town or local funds, the tuition bills of non-resident children, and the income of district funds, if there be any. The money from all these sources should be exhausted before drawing on the collector of the district for any part of the district tax.

The trustees may at any time, if they are under contract to pay a teacher his wages, and there is no money in the hands of the supervisor, levy a tax for the amount. They are not by law required to wait for the apportionment of the public money.

12. *If the library money apportioned to the district be less than three dollars, to apply it to the payment of teachers' wages.*

The trustees must ascertain what amount of library money has been apportioned to the district. If it is more than three dollars they must expend it in the purchase of books.

By reference to subdivisions 13 and 14, it will be seen that *all* public and district moneys must be drawn by a written order upon the persons having the custody of the same.

§ 50. The trustees may expend, in necessary and proper repairs of each school-house under their charge, a sum not exceeding twenty dollars in any one year. They may also expend a sum not exceeding fifty dollars in the erection of necessary out-buildings, where the district is wholly unprovided with such buildings. They may also make any repairs and abate any nuisances, pursuant to the direction of the school commissioner as hereinbefore provided; and provide fuel, pails, brooms, and other implements necessary to keep the school-house or houses clean, and make them reasonably comfortable for use, and not provided for by a vote of the district; and may also provide for building fires, and cleaning the school room, by arrangement with the teacher or otherwise. They shall provide the bound blank books for the entering of their accounts, and the keeping of the school lists, the records of the district, and the proceedings of district and trustee meetings. Whenever it shall be necessary for the due accommodation of the children of the district, they may hire temporarily any room or rooms for the keeping of schools therein. Any expenditure made or liability incurred, in pursuance of this section, shall be a charge upon the district.

To pay the expenses incurred under this section, the trustees may levy a special tax, or may add the amount expended to any tax list lawfully made.

The better course for the trustees and the district is to have an estimate carefully made, in items, of the expenditures for the year, and presented at the annual meeting. Let it be canvassed at the meeting, and a tax voted sufficient to cover the expense.

The most important sentence in this section is the one which authorizes the hiring of rooms, temporarily, for the keeping of school. The trustees can offer no excuse for not having a school for twenty-eight weeks, on the ground that the school-house is not in good repair. If such is the fact, then the trustees, under this section, have power to hire a room or rooms. If the school-house will not comfortably accommodate all the children of a district, a room may be hired and another school organized.

§ 51. When trustees are required or authorized by law, or by a vote of their district, to incur any expense for such district, and when any expenses incurred by them are made, by express provision of law, a charge upon such district, they may raise the amount thereof by tax in the same manner as if the definite sum to be raised had been voted by a district meeting.

This provision first came into force as section 14, chapter 260 of 1841. The supreme court, commenting upon it, in 4 *Denio*, 298, says: "It is said that the statute ought to be so construed as to confine its operations to small incidental expenses incurred by the trustees. But the language is general, and there is nothing which, upon any just principle of interpretation, will warrant us in restricting the provisions to any particular class of expenses." That case was one in which the district had voted to build a school-house, and the materials and dimensions specified were such as to have the effect of bringing the cost within four hundred dollars, and it was held that "if the district had left the whole within the discretion of the trustees, and they had kept within the four hundred dollars, the act of 1841 would have authorized them to levy the tax." The object of this section, however, is simply to dispense with the necessity of fixing a *definite amount* to authorize the levying of a tax, and it has not the effect of permitting the trustees to levy a tax, under the vote of a district for expenses incurred for any *purpose* for which the law has not conferred the power upon the inhabitants of voting a definite tax. If the inhabitants cannot lay the tax directly, they cannot effect the same object by directing the trustees to expend money or to do acts involving the expenditure of money.

Among the expenses made by express provision of law a charge upon the district, and which the trustees are authorized to incur without any vote of their district, is that of hiring temporarily any room or rooms for the keeping of schools therein, whenever it shall be necessary for the accommodation of the children.

It is believed that a tax list, for any expense incurred under this section, may be separate, or the amount may be included in any other tax list necessary to be made out at the time when the amount of such expenses shall have been ascertained. It is, however, the duty of the trustees, when practicable, to ascertain the definite amount, and to make out the tax list therefor within thirty days after the meeting at which the expenditure may have been authorized. When any tax under this section is included in the same tax list with others, the heading should distinctly specify the amount, the object and the authority; as by saying, for example: "Also, twelve dollars for the expense of temporarily hiring rooms for the keeping of schools therein, necessary for the accommodation of the children in said district, from the first day of May to the first day of August, 1857; also, eight dollars and ninety-three cents for the expenses incurred in grading and draining the site of the school-house, under the resolution of a district meeting held April 12, 1857."

§ 52. The trustees, or any one of them, if not forbidden by another, may freely permit the school-house, when not in use for the district school, to be used by persons assembling therein for the purpose of giving and receiving instruction in any branch of education or learning, or in the science or practice of music. (*See comments on subdivision 6, of section 49.*)

§ 53. They shall procure two bound blank books for the district, and, when necessary, others in their place. In one of them, at or before each annual district meeting, they shall enter at large, and sign a statement of all movable property belonging to the district, and their accounts of all moneys received or drawn for or paid by them, and they shall deliver this book to their successors. In the other, the teachers shall enter the names of the pupils attending school, their ages, the names of the persons who send them, and the number of days each pupil attends, and also the facts and the dates of each inspection of the school by the school commissioner or other official visitor, and any other facts, in such form as the Superintendent of Public Instruction shall require; and each teacher shall, by his oath or affirmation, verify his entries in such book, and the entries shall constitute the school lists from which the average daily attendance shall be determined; and such oath or affirmation may be taken by the district clerk, but without charge. Until the teacher shall have so made and verified such entries, the trustees shall not draw on the supervisor for any portion of his wages.

The account to be entered by the trustees should specify every sum of money received by them, or any one of them, in his official capacity, and of all orders on the supervisor, or on the collector, giving the date when and amount. On the opposite page they should credit themselves with every expenditure and payment, specifying particularly when, and to whom paid, and for what purpose, and referring to a proper voucher, which should be filed and delivered to their successors.

On another page they should make an accurate inventory of all the movable property belonging to the district, such as the library of the district, stating the number of volumes and their condition, and giving a catalogue of the books wherever a general reference cannot properly be made, as to the first, second, third, etc., series of the Harper Library; or Nos. 1, 2, 3, etc., of the Harper Library or Family Library, etc., etc., and the furniture, appendages and apparatus of the school room, specifying each article. The whole to be followed by a certificate in the following form:

We, the subscribers, trustees of district No. , in the town of *Trenton*, do hereby certify that the preceding, from page to page , inclusive, contains a true and accurate account of all the moneys received by us for the use of said district, and of the expenditures thereof, and a correct statement and inventory of all the movable property belonging to said district.

Dated this day of , 18 .

A. B.,  
C. D.,  
E. F., } *Trustees.*

The teacher's list, to be kept in the second book named, is the basis upon which the average daily attendance is ascertained for the purpose of apportioning so much of the public money as is required to be apportioned according to average attendance.

Among the first duties of the trustees will be that of placing the book in the hands of the teacher, and directing him to keep the list daily, and accurately.

The teacher will write the name of each scholar on the list, the first day he enters school, and note his attendance every day during the term. The trustee should inform him that, unless the roll is correctly and faithfully kept, and handed to the collector duly verified at the close of the school, he will not be entitled to call on them for his wages.

At the close of his term the teacher must make out his list, containing the name of all the pupils, with the date of their entrance, and the number of days' attendance in full.

Registers for the use of teachers are now prepared in the office of the department, printed and forwarded to the trustees in time for use in all the schools. All needful explanations and directions for the instruction and guidance of teachers and trustees will be found on the cover of the registers.

The correctness of the register must be verified by the teacher. The following is the form of an affidavit :

Town of  
County of } ss.

being duly sworn, deposes and says that the within register of attendance of pupils in district No. Town of from the day of 186 , to the day of 186 , is correct to the best of his knowledge and that he has fully and truly made, in the "statement" on the last preceding page, all the entries called for by the headings of the respective columns.

*Signed,*

Subscribed and sworn before me this }  
day of 186 . }

This affidavit, or affirmation, may be certified by a justice of the peace, or commissioner of deeds, judge of any court of record, county clerk or school commissioner or district clerk to have been taken before him.

§ 54. If any portion of the moneys apportioned to the district shall not be paid, by the supervisor, upon the due requirement of the trustees, they shall forthwith notify the treasurer of the county, and the Superintendent of Public Instruction, of the fact.

It is the duty of every supervisor to apply for and receive the public moneys from the county treasurer as soon as they can after the commissioners have made and certified their apportionment, which will be some time in the month of March. They will therefore be ready to meet the orders of trustees at any time after the first of April.

If they refuse to pay orders duly drawn, trustees and teachers, by a prompt notice to the county treasurer and Superintendent, can have an early remedy for mistakes or delays. Inquiry cannot be made too soon into official neglect of duty.

§ 55. The trustees shall, once in each year, render to the district, at its annual district meeting, a just, full and true account in writing, under their hands, of all moneys received by them respectively for the use of the district, and of the manner in which the same shall have been expended, and showing to which of them an unexpended balance, or any part thereof, is chargeable; and of all drafts or orders made by them upon the supervisor, collector, or other custodian of moneys of the district; and a full statement of all suits and proceedings brought by or against them, and of every special matter touching the condition of the district.

If the trustees keep a book as directed by section 53 of this title, and preserve and file all vouchers, the presentation of their account will be an easy matter. It would be well for the meeting to select some man in whom they have confidence to examine the account of the trustees and report to the inhabitants the result of his investigation.

§ 56. An outgoing trustee shall forthwith pay to his successor, or any other trustee of the district in office, any such unexpended balance, or part of such balance remaining in his hands.

As the public money remains in the hands of the supervisor, and the money collected on district tax lists for teachers' wages in the hands of the district collector, this section can apply only to trust funds, and money raised for building purposes, and for ordinary district expenses, such as repairs, furniture, blank books, etc., etc.

§ 57. Every trustee who shall refuse or neglect to render such account shall forfeit twenty-five dollars. Every trustee who shall neglect or refuse to pay over any balance so found in his hands,



shall forfeit twenty-five dollars. These penalties are for the benefit of the schools of the district, and shall be sued for by the supervisor of the town in which the school-house, or school-house longest owned or held by the district, is. (*See sec. 22, of title 3.*)

§ 58. By a willful neglect or refusal to render such account, a trustee also forfeits any unexpired term of his office, and becomes liable to the trustees for any district moneys in his hands.

§ 59. The trustees in office shall sue for and recover any district moneys in the hands of any former trustee, or of his personal representatives, and apply them to the use of the district.

§ 60. The trustees of each school district shall, between the first and second Tuesdays of October, in each year, make and direct to the school commissioner a report in writing, dated on the first day of October of the year in which it is made, and shall sign and certify it, and deliver it to the clerk of the town in which the school-house of the district is situated; and every such report shall certify:

1. The whole time any school has been kept in their district during the year ending on the day previous to the date of such report, and distinguishing what portion of the time such school has been kept by qualified teachers, and the whole number of days, including holidays, in which the school was taught by qualified teachers;

2. The amount of their drafts upon the supervisor for the payment of teachers' wages during such year, and the amount of their drafts upon him for the purchase of books and school apparatus during such year, and the manner in which such moneys have been expended;

3. The number of children taught in the district school or schools during such year by qualified teachers, and the sum of the days' attendance of all such children upon the school;

4. The number of children residing in the district on the last day of September previous to the making of such report, between the ages of five and twenty-one, and the names of the parents or other persons with whom such children respectively reside, and the number of children residing with each;

5. The amount of money paid for teachers' wages, in addition to the public money paid therefor, the amount of taxes levied in said district for purchasing school-house sites, for building, hiring,

purchasing, repairing and insuring school-houses, for fuel, for district libraries, or for any other purpose allowed by law, and such other information in relation to the schools and the district as the Superintendent of Public Instruction may, from time to time, require.

§ 61. The annual reports of trustees of school districts, of children residing in their district, shall include all over five and under twenty-one years of age, who shall, at the date of such report, actually be in the district, composing a part of the family of their parents or guardians or employers, if such parents, guardians or employers reside at the time in such district, although such residence be temporary; but such report shall not include children belonging to the family of any person who shall be an inhabitant of any other district in this State in which such children may by law be included in the reports of its trustees; nor any children who are supported at a county poor-house or an orphan asylum; nor any Indian children residing on reservations where schools provided by law for their education are taught.

§ 62. Where a school district lies in two or more counties, its trustees shall make such an annual report for each part of it lying in a different county, and file each in the office of the clerk of town in which the part of the district to which it especially relates lies; and such reports shall be in the form and contain all such special matters as the Superintendent of Public Instruction shall from time to time prescribe.

§ 63: The trustee of every separate neighborhood shall every year, within the time aforesaid, in like manner, make his annual report to the school commissioner, and file it in the office of the clerk of the town of which the neighborhood is a part. Such report shall specify the whole amount of public moneys received during the year, and from what public officer, and the manner in which it was expended; the whole number of such children as can be included in the district trustees' report residing in the neighborhood on the last day of September previous to the making of the report; and any other matters which the Superintendent of Public Instruction may require.

§ 64. Every trustee of a school district or separate neighborhood, who shall willfully sign a false report to a school commissioner, with the intent of causing such school commissioner to

apportion to his district or neighborhood a larger sum than its just proportion of school moneys; or in the case of a trustee of a separate neighborhood, with the intent to procure from the State Superintendent of Public Instruction a larger allowance to the neighborhood, shall for each offense forfeit the sum of twenty-five dollars, and shall also be deemed guilty of a misdemeanor. Such penalties, and any fines which shall be imposed for the misdemeanor, are for the benefit of the common schools of the county.

The five sections from section 60 to section 64 inclusive will be considered together.

A form of the annual report of the trustees will not be inserted, because it is subject to alteration from year to year. The trustees are required to report such information, besides what is specially named in the statute, as the Superintendent of Public Instruction may from time to time require.

The comments and instructions which follow apply to the blank reports for the year 1867; omitting, however, all reference to rate bills, which, having been abolished, will hereafter have no place in the reports, and renumbering the items after No. 4 in the financial report, and after No. 2 in the statistical report.

The efficient working of our common school system requires that each school officer shall strictly observe its provisions. The reports of trustees are the source of nearly all the statistical information in regard to the schools, and therefore are of paramount importance. Accuracy in these reports is especially necessary for the equitable and legal distribution of the public moneys, and for the guidance of the Superintendent of Public Instruction and of the school commissioners in their various duties.

The annual report to the school commissioners must be made by the trustees, and deposited with the town clerk between the first and second Tuesdays of October. It should always be made, when possible, by the trustees in office at the close of the school year in regard to which the report is made, and should be deposited with the town clerk *before the annual meeting of the district.*

A digest of the facts and figures reported by the trustees of the various school districts is made by the school commissioners of the respective commissioner districts, and forwarded to the Superintendent of Public Instruction. This digest becomes a part of the permanent record of this department, and the facts therein contained are the bases upon which *the annual apportionment is made.*

The law provides that if trustees fail to make their report within the time prescribed, and in consequence thereof there shall result a loss of any money to the district, they may be held responsible for the money so lost.

The following explanations, carefully observed, will enable trustees to avoid all errors which, under other circumstances, might find place in their report.

The numbers, with the items to which they correspond, inclosed in quotation marks in the following instructions, are taken from the blank for "Report of

Trustees," issued from the Department of Public Instruction, and sent to every district in the State.

"FINANCIAL."—"Receipts."

"1. Balance on hand October 1, 186 , after paying all claims for previous school expenses."

This includes the balance of the public moneys belonging to the district, remaining in the hands of the supervisor, as well as all other moneys unexpended, whether raised by tax or derived from any other source, after paying all the indebtedness of the district accruing previous to October 1, 186 . If, on the first Tuesday of March, 186 , there was still remaining in the hands of the supervisor any public money apportioned in the year 186 , it should not be included here, in item "1."

"2. Amount of public school moneys, both for teachers' wages and library apportioned to the district from State funds."

Do not include in this item any library moneys raised in the district, nor any moneys referred to in item "3." If any supplementary allowance has been received from the Superintendent of Public Instruction, it should be reported under this item.

"3. Amount received from the proceeds of gospel and school lands, whether rents, or the proceeds of a fund raised by the sale of such lands."

But few towns in the State have any funds or lands such as are referred to in this item, and no explanation is deemed necessary, beyond what may be found under section 1 of title 4.

"4. Amount raised, including the amount remaining *to be* raised, by *tax* on property, for all school purposes within the school year; but *not* including money so raised to pay expenses of a previous year."

Trustees will include under this item only the amounts raised, and to be raised, by *tax* levied upon the *property* in the district, for the payment of school expenses (including teachers' wages) incurred within the school year. In fact, the sum reported under this item ought to be the actual cost of the school (including repairing and building) for the year, less the amount of the public moneys and the amounts reported under items "1," "3" and "5."

If a tax has been ordered to be raised by installments, the trustees report each year *only* the installment actually collected, or legally collectible, within the year.

"5. Amount received from all other sources, not above enumerated, viz.:

"Teachers' board for \_\_\_\_\_ weeks, the teacher having boarded around (estimated);

"Tuition bills of non-resident pupils, and of pupils not of school age;

"Subscriptions, donations, legacies, etc.;

"Other sources not named above."

In cases where teachers provide themselves with board, without any cost to the district over and above the stipulated wages per day, week or month, the

value of such board is not to be reported under this item. In other cases, whatever the number of qualified teachers employed, trustees should set down the number of weeks each boarded around, and the value of the board of each, and add these numbers, and place the whole number of weeks, and the whole value of the board, in their report. This board should be stated in the "receipts," for the reason that it was just as truly furnished by the district for the support of school, as were the *moneys* raised by tax. The amount of the tuition bills collected of non-resident pupils, and persons over twenty-one years of age, should be reported under the second subdivision of this item. All other moneys received during the school year, and not reported under any preceding subdivision, should be given in this item under the following subdivision.

The several sums reported under item "5," should be placed in the inner column, then added, and their amount written directly beneath, and also in the outside column, opposite the words "Total, carried into outside column."

#### "6. Total."

Special care should be taken that this "total," or footing be correctly made.

#### "PAYMENTS."

"7. For teachers' wages earned during the school year ending with September 30, 186 (except for colored schools), as follows, viz. :

- "By drafts on the supervisor ;
- "From funds collected by a tax on property ;
- "Value of teachers' board, the teacher having boarded around (estimated) ;
- "From moneys received from all other sources ;
- "Teachers' wages remaining unpaid Oct. 1, 186 ."

Under specification "By drafts on the supervisor," trustees should include all drafts actually made during the school year closing with September 30th, 186 , for payment of teachers' wages earned during that year, whether made for payment of moneys apportioned for that year or the previous school year. But if they have, since the close of the year, paid, or contemplate paying in the future, any wages of teachers for that year from the moneys in the supervisor's hands October 1, 186 , such payments should *not* be included in *this subdivision* of the item. The amounts for wages thus paid would be properly embraced in subdivision "Teachers' wages remaining unpaid," and should be reported *next year* under subdivision "By drafts on the supervisor."

Under subdivision "From funds collected by tax on property," will be included all moneys raised by district tax for teachers' wages. The amount to be reported under "Value of teachers' board," etc., will be the same reported under the first subdivision of item "5" of receipts.

If trustees have paid out for teachers' wages any moneys received from any sources not named in the first four subdivisions of this item, they should report them under subdivision "From moneys received from all other sources."

The amount to be reported under subdivision "Teachers' wages remaining unpaid," will be easily found, by subtracting, from the amount contracted to be

paid to teachers for wages earned during the year, the sums reported under the preceding subdivisions of this item.

"8. For libraries ; including all moneys applicable to library purposes ; both the amount received from the supervisor, and the amount raised in the district, within the year, for such purpose."

Under this item state the amount actually paid for new books for the library and the repair of old books, from moneys stated in the report as received by or raised in the district. They will not include any amount paid for a book-case.

"9. For school apparatus ; such as blackboards, globes, maps, etc."

State the amount which has actually been paid for school apparatus, within the year, from the moneys of that year, whether library money received from the State, or money raised by tax, or received from any other source.

"10. For colored schools ; *all expenses*, for teachers' wages or other purposes, actually paid or to be paid."

"11. For expenses of school-houses and sites, viz. :

"For sites ;

"Building or purchasing school-houses ;

"Hiring school-houses ;

"Repairing and insuring school-houses ;

"Fences, side-walks, out-houses, and improving sites ;

"Furniture ; such as chairs, tables, clocks, bells, etc."

Under the second subdivision of item "11," in cases where a tax for the purpose of building a school-house is raised by installments, include only the installment collected and paid out within the year.

"12. For all other incidental expenses, viz. :

"For fuel, and preparing the same for use ;

"Building fires, and sweeping and otherwise cleaning school-houses ;

"Salaries, other than those of teachers, for the following purposes, viz. :"

By section 50 of title 7, trustees are authorized to "provide for building fires and cleaning the school room, by arrangement with the teacher or otherwise."

The moneys paid for these purposes, unless paid to the teacher as a part of his wages *as teacher, by special contract*, or to some individual employed at a salary by the year, as janitor, should be reported under the second subdivision of this item. If paid to a janitor as salary, they should be reported, and the purpose for which they were paid specifically stated, on the blank lines under the last subdivision.

In cases where a clerk of the board of education has been appointed, and a salary has been paid him, under authority derived from a special act of the Legislature, the fact, and the sum paid as salary, should be reported on the blank lines under the last subdivision of this item.

"13. Forfeited by not having been drawn from supervisor's hands before the first Tuesday of March, 186 ."

If there were any public school moneys apportioned to a district by the school commissioner in 186 , remaining in the hands of the supervisor on the first Tuesday of March, 186 , such moneys were on that day forfeited by the district, and should have been reported by the supervisor to the county treasurer. If any such sum was so reported, it was re-apportioned by the commissioners among the districts of the entire county. The amount so forfeited, if any, must be stated under this item. (*See section 4 of title 4, and also subdivision 3 of section 27, title 3 of this act.*)

"14. Amount remaining on hand October 1, 186 , after paying all claims, for school purposes, up to that date."

If the report is *correctly* made, up to this point, trustees will easily find the true balance by subtracting from the total "receipts" the sum of the items under "payments," preceding item "14," But in order to *verify* their report, they can collect into one sum all the moneys subject to their order, for which orders were not given previous to October 1, 186 , viz.: The amount of public moneys remaining in the hands of the supervisor; the amount in the collector's hands, together with the amount remaining uncollected on tax list, even though such tax list has not been put into the collector's hands; any amount in their own hands, from any source whatever, as from tuition bills of non-resident pupils or pupils over twenty-one years of age, donations or legacies; and all moneys, wherever they may be, to which the district has an undisputed title, and which were due previous to October 1, 186 .

From this sum subtract the amount still due for teachers' wages, and for any other expenses, which accrued previous to October 1, 186 . This balance should agree with the former balance found as above stated.

"15. Total."

This *total* of "payments" must agree, and will agree if correctly composed, with the preceding "*total*" of "receipts" under item "6." If, upon finding the correct sum of the items, these totals do *not* agree, the *error must be discovered and corrected* in the proper place.

#### "STATISTICAL."

The "STATISTICAL" portion of the report should be rigidly exact.

"1. The number of duly licensed teachers employed and *teaching at the same time* for twenty-eight weeks, or more, during the school year commencing October 1, 186 , and closing with September 30, 186 ."

What the Superintendent wishes to know, under this item, is, not how many different teachers have been in school during the school year, but how many duly licensed teachers has the school had regularly and constantly employed teaching in the school *all the time for the same entire twenty-eight weeks*. A brief temporary absence of any teacher, occasioned by sickness or other uncontrollable circumstance, the trustees paying the teacher for the entire time, is not to be regarded.

Suppose A. has been employed for the winter term, and B. for the summer term. In that case trustees are to report (in answer to the question) only *one* teacher. Again, if A. taught *ten weeks*, B. *ten weeks*, and C. *eight weeks* or more, they report but *one* teacher. But if A. and B. taught both at the same time, and *each for twenty-eight weeks*, then they are to report *two* teachers; or if A. and B. taught together twelve weeks, then C. and D. twelve weeks, and finally E. and F. four weeks, they are to report in such case only *two* teachers.

This item forms a basis for the distribution of a part of the school money, and will not admit of errors.

"2. The number of children over five and under twenty-one years of age, residing in the district on the 30th day of September, 186 , etc."

An actual census must be taken, and none under five or over twenty-one years of age should be reported. The penalty affixed by law for a false report, as to the number of children in the district, is *twenty-five dollars*, to be collected from the trustees making such report. In making up this number, and the "schedule" which follows the statistical part of their report, trustees will consult sections 61, 62, 63 and 64, in article 6 of title 7 of this act.

"3. The number of private schools within the district (not including colleges, incorporated academies or seminaries);" and,

"4. The number of pupils over five and under twenty-one years of age, registered as having attended such private schools some portion of the school year closing with September 30, 186 ."

In reporting the number of private schools, and of the pupils attending them, there has heretofore been great neglect on the part of some district officers. Trustees should take pains to ascertain the facts fully, and report them correctly.

"5. The whole time the district school was taught within the twelve months ending with September 30, 186 , etc.;" and,

"6. The whole time the district school was taught by teachers *while duly licensed*, during said year."

The whole time, *in weeks and days*, during which school has been kept by duly licensed teachers should be carefully stated. It is important also that the dates on which each teacher commenced and closed his service be given. These dates can be obtained from the school register, kept by the teachers, as shown by the affidavits made by them at the close of the register.

"7. The names of the teachers who taught the district school during the school year commencing October 1, 186 , and closing with September 30, 186 , and of the authorities by whom they were severally licensed, and the dates of the beginning and ending of the services of each, and the time of service of each, *while duly licensed*, etc."

Do not fail to write the first Christian name of each teacher in full, and to state by whom each teacher was licensed. This is an easy matter, if trustees, as they should, refuse to hire any teacher who cannot show his license. There is evidence in this department that, in some few instances, persons asking employment as teachers inform trustees that they are duly licensed, when they are not. It is therefore suggested that, before hiring a teacher, trustees require



him to show his license, and that they examine it for the purpose of *knowing* that the time for which it was granted has not expired. This is a safe precaution, to which an honest applicant for any school will not object.

Attention is particularly called to the following sections of the school act, viz. : Sections 7 and 29 of title 3 ; sections 42 and 43 of title 7, and section 9 of the same title.

*Those children ONLY are of SCHOOL AGE, who are over five and under twenty-one years of age.*

"8. The number of children of school age, who, *while residing in the district*, attended the district school some portion of the school year ;" and,

"9. The number of children of school age, who, *while residing in other districts*, attended the district school in *this district* some portion of the school year."

Trustees will, in stating the "number of children of school age, who, while residing in the district, attended the district school," keep in view and make the distinction, in their report, between those who, while attending school, were residents of their district, and those who were not residents of it ; and, in the "schedule" at the close of their report, they will give the number, and the names of the parents or guardians, of those children *only* who resided in the district on the 30th day of September, 186 .

This information will be indispensable to the school commissioner, for the purpose of apportioning to every district its just share of the public money.

"10. The whole number of children, of school age, who attended the district school some portion of the year."

The number to be reported under this item, is the sum of the numbers reported under items "9" and "10."

"11. The average daily attendance of children of school age, *residing in the district* while attending the school ; and,

"12. The average daily attendance of children, of school age, attending the school, but *residing in other districts* while so attending."

The average daily attendance of children of school age *residing in the district* while attending the school, and of the children of school age attending the school, but *residing in other districts* while so attending, must be given, or the district will not draw any public money for attendance. Trustees must not include the attendance of any children while they were under 5 years of age, nor the attendance of any pupils after they became 21 years of age.

In cases where there are children who have attended certain departments of the school not taught by duly licensed teachers, the attendance of such pupils should not be reported for the time during which they have attended such departments, unless they have at the same time attended some department of the school which was taught by a duly qualified and licensed teacher.

The RULE for finding the average daily attendance, in each case, is simply this :

1. *Add together all the days' attendance of all the children over 5 and under 21 years of age, who, while residing in the district, attended the district school, and divide the sum by the whole number of days on which the school was actually taught as stated*

in item "16." (Trustees will not include for *this* purpose, in the whole number of days on which school was actually taught, any days, whether they be legal holidays or other days, on which the school did not hold its regular session; since no attendance of pupils will be found on the registers for those days.)

2. *Add together the days' attendance of all the non-resident pupils over 5 and under 21 years of age, who, while residing in other districts, attended the district school, and divide the sum by the number of days school was actually taught as stated in item "16."*

When a fraction is contained in the average daily attendance, write it as a common and not as a decimal fraction; thus, 220  $\frac{120}{150}$ ths, not 220.8. Do not reduce the fraction to lower terms.

All children of over five and under twenty-one years of age, residing in the county in which the school-house stands, are to be reported, as regards their number and attendance, to the commissioner in whose commissioner district the school-house is situated.

In a few other cases which exist within the State, it is believed that the proper course for the trustees to pursue in making their annual report to the commissioner will be shown by the following example, which is designed as a guide for trustees of *joint districts*; that is, districts *lying partly in two or more counties*. No other districts are *joint districts*.

#### EXAMPLE.

There is a certain school district, No. 7, lying partly in the town of Antwerp, in the second commissioner district of Jefferson county, partly in the town of Theresa, in the third commissioner district of Jefferson county, and also partly in the town of Rossie, in the first commissioner district of St. Lawrence county.

We will suppose, for our purpose, that the school-house stands in Rossie, and that the following statement shows the other facts as regards children and their residence and attendance, from which the trustees are to make their report. Suppose, also, that the form of the district and the relative positions of the school-house and the town and county lines, are correctly shown by the following

## DIAGRAM.

<p>ST. LAWRENCE COUNTY.</p> <p>First Commissioner District.</p> <p>M. L. LAUGHLIN, School Commissioner.</p> <p>-----</p> <p>Town of</p> <p>ROSSIE.</p> <p>School □ House.</p>	
<p>JEFFERSON</p> <p>Third Commissioner District.</p> <p>CHAS. A. KELSEY, School Comm'r</p> <p>-----</p> <p>Town of</p> <p>THERESA.</p>	<p>COUNTY</p> <p>Second Commissioner District.</p> <p>J. M. BEAMAN, School Comm'r.</p> <p>-----</p> <p>Town of</p> <p>ANTWERP.</p>

## STATEMENT.

Suppose that in ROSSIE

The number of children of school age residing in said district No. 7 and in Rossie, September 30, 186 , was, .....	18
The number of children of school age, who, while residing in the district, attended said school during the year, was, .....	13
They attended said school in the aggregate, .....	1,850 days.
The number of children of school age, who, while residing in other districts in Rossie, attended said school during the year, was, ...	6
They attended said school in the aggregate, .....	725 days.

## IN ANTWERP.

The number of children of school age, residing in said district and in Antwerp, September 30, 186 , was, .....	15
The number of children, of school age, who, while residing in the district, attended said school during the year, was, .....	10
They attended said school in the aggregate, .....	1,225 days.

The number of children, of school age, who, while residing in other districts in Antwerp, attended said school during the year, was,...	3
They attended said school in the aggregate,.....	575 days.

## IN THERESA

The number of children, of school age, residing in said district and in Theresa, September 30, 186 , was,.....	12
The number of children, of school age, who, while residing in the district, attended said school during the year, was, .....	9
They attended said school in the aggregate,.....	1,250 days.
The number of children, of school age, who, while residing in other school districts in Theresa, attended said school during the year, was, .....	4
They attended said school in the aggregate,.....	575 days.
The whole number of days on which school was actually taught during the school year, that is, was open for the instruction of pupils, a duly licensed teacher having been present each day (as given in item 17), was,.....	150

Now, how shall the trustees make their annual report, as regards the number of children and their attendance?

They would report to the commissioner of the first commissioner district of St. Lawrence county, as follows:

"8. The number of children, of school age, who, <i>while residing in the district</i> , attended the district school some portion of the school year, was, .....	13
"9. The number of children, of school age, who, <i>while residing in other districts</i> , attended the district school <i>in this district</i> some portion of the school year, was, .....	6
10. The whole number of children, of school age, who attended the district school some portion of the year, was (13 and 6 are),..	19
"11. The average daily attendance of children, of school age, residing in the district while attending the school, was ( $\frac{1850}{150}$ or $12\frac{50}{150}$ is),	$12\frac{50}{150}$
"12. The average daily attendance of children of school age, attending the school, but <i>residing in other districts</i> while so attending, was ( $\frac{725}{150}$ or $4\frac{125}{150}$ is),.....	$4\frac{125}{150}$

And in the "schedule" at the close of the report, they would specify and report *only* the eighteen children residing in school district No. 7 and in the town of Rossie, September 30, 186 .

They would report to the commissioner of the second commissioner district of Jefferson county, as follows:

"8. The number of children of school age, who, <i>while residing in the district</i> , attended the district school some portion of the school year, was, .....	10
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- "9. The number of children of school age, who, *while residing in other districts*, attended the district school *in this district* some portion of the school year, was, ..... 3
- "10. The whole number of children of school age, who attended the district school some portion of the year, was (10 and 3 are),.. 13
- "11. The average daily attendance of children of school age, residing in the district while attending the school, was ( $\frac{1225}{150}$  or  $8\frac{25}{150}$  is), 8  $\frac{25}{150}$
- "12. The average daily attendance of children of school age, attending the school, but *residing in other districts* while so attending, was ( $\frac{375}{150}$  or  $2\frac{75}{150}$  is), ..... 2  $\frac{75}{150}$

In the "schedule" at the close of their report, they would specify and report *only* the fifteen children residing in district No. 7 and in the town of Antwerp, September 30, 186 .

They would report to the commissioner of the third commissioner district of Jefferson county, as follows:

- "8. The number of children of school age who, *while residing in the district*, attended the district school some portion of the school year, was, ..... 9
- "9. The number of children, of school age, who, *while residing in other districts*, attended the district school *in this district* some portion of the school year, was, ..... 4
- "10. The whole number of children, of school age, who attended the district school some portion of the school year, was (9 and 4 are), ..... 13
- "11. The average daily attendance of children, of school age, residing in the district while attending the school, was ( $\frac{1250}{150}$  or  $8\frac{50}{150}$  is), ..... 8  $\frac{50}{150}$
- "12. The average daily attendance of children, of school age, attending the school, but *residing in other districts* while so attending, was ( $\frac{575}{150}$  or  $3\frac{125}{150}$  is), ..... 3  $\frac{125}{150}$

In the "schedule" at the close of their report, they would specify and report *only* the twelve children residing in district No. 7 and in the town of Theresa.

These three reports would be on separate papers and would be sent to the respective commissioners.

- "13. The whole number of days' attendance at the district school of all the children, of school age, *residing in the district* while attending the school."

Trustees will be careful and include in item 14, the attendance of those children *only*, who, while attending their school, *resided in their district*.

- "14. The whole number of days' attendance at the district school, of all the children of school age, *residing in other districts* while attending the school."

It is *very* important to report correctly, under item 15, the attendance of those children *only* who, while attending school, *resided in other school districts*.

Trustees must not include under either item 13 or 14 the attendance of any children who were not of school age at the time of such attendance. In many districts there will be pupils who became five or twenty-one years of age during the school year. In such cases trustees should include under these items the attendance of such pupils for that time *only* while they were over five and under twenty-one years of age.

"15. The whole number of days' attendance of all the children of school age who attended the school."

The number of days to be reported in item 15 will be found by adding together the two numbers reported in items 13 and 14.

"16. The whole number of days on which school was actually taught during the school year; that is, was open for the instruction of pupils, a duly licensed teacher having been present each day."

Include under this item all the days on which the district school was taught by a duly qualified teacher, whether they be ordinary week-days or holidays.

By section 5 of title 11, trustees are authorized to "give to the teacher or teachers employed by them, the whole or any part of the time spent by such teacher or teachers in attending at any regular session or sessions of an institute in a county embracing the school district or any part thereof, without deducting any thing from his or their wages for the time so spent." Where trustees *have given the teacher such time so spent, and have paid the teacher his or her regular compensation for such time*, they may report the facts in their annual report; and in case such time, added to the time during which the district school shall have been taught by a duly qualified teacher, shall equal twenty-eight weeks, "the Superintendent of Public Instruction may include the district in his apportionment of the State school moneys, and direct that it be included by the school commissioner or commissioners in their apportionment of school moneys; provided always that such school district be in all other respects entitled to be included in such apportionment."

Trustees will understand distinctly that they are not to report such time unless the trustees have given it to the teacher, and have paid the teacher his or her regular wages for such time. When reported it should not be included under item "16," but in item "18," on the second page of the report, and should constitute item "14" on the third page.

"17. The number of holidays, during the terms of school, occurring on the regular school days, but during which the school was not taught."

Holidays occurring in vacations, or on days on which the school would not be taught were they *not* holidays, are not to be included in this item.

"18. The number of *other week-days*, during the terms of school, on which school was not taught."

Under this item trustees will report Saturdays and other week-days on which school was not taught, occurring during the terms of school, but *not* in vacations. Include, also, those holidays occurring during the terms of school, which were not reported under item "16" or "17."

Vacations of a week or more, occurring during the terms of school, are not to be included in the time reported in item "16," "17" or "18."

A few words only need be said in regard to the remaining items on the second page of the report.

It is especially important that trustees report the *actual number of volumes* in the district library, and their estimated value. If the district has no library, write the word "none" in the first blank space in item "20."

In all cases they will state the value of the school-house site and of the school-house respectively, according to their best judgment. Do not fail to give the assessed valuation of all the property taxable in the district.

Trustees are urged to give correctly *every item* called for in the blank for report. The questions on page 3 of the blank have been added mainly for the purpose of affording the school commissioner and the department additional information in regard to the affairs of the various districts.

A *full and correct* report in regard to *every item* called for by the blank for the report must be insisted upon by the school commissioners and by the department.

In filling the blank spaces at the close of the report, give the name of post-office, that the commissioner may know where to address the trustees, in case he shall desire so to do. In many districts in the State, the district number has been changed since July 17 1866. In every case the district should be reported under the *new* number.

#### JOINT DISTRICTS.

If a district does not lie wholly in one county, and the children to be reported do not all reside in the same county, trustees will make to the commissioner, in whose commissioner district the school-house stands, a full "financial" report, and also a full "statistical" report, except that it must be a report in regard to those children *only* who reside in his county; but they will include all these, even though some of them may reside in some other commissioner district of his county. They will make to each other commissioner in any county other than that in which the school-house stands, and in whose commissioner district any portion of their school district is situated, a report showing the length of time the school shall have been taught, by duly licensed teachers, during the said school year; the number of children of school age who reside in that part of their school district which lies in his commissioner district; the number of children of school age who, at any time during the year while residing in that part of their district, shall have attended their school; and also the number of children residing in other school districts lying *in any town* in his commissioner district, who shall have attended their school for any length of time during the year, being at that time of school age. They will also make out the average daily attendance, in each case, so that, in each report, it shall relate to those children *only* who are therein reported.

All blanks, registers, and other documents for school districts are to be sent to the town clerk; and the trustees should call for them if not received in

time. If they fail to receive them, simply because they have not called on the town clerk for the same, they will not therefore be relieved from any responsibility of having the register kept, and of properly making their annual report.

It is quite important that the names of school district officers and their post-office address be known at the department, and by the school commissioners, that communications may be sent to any of them by mail. In view of this, the law now requires the district clerk to report to the town clerk, immediately after each annual school meeting, the names and post-office address of the district officers. Trustees should see to it that the clerk of their district complies with the law in this respect.

In making out the report, the trustees should, if possible, meet together. As a precaution, it is earnestly urged that they complete their report and deposit it in the office of the town clerk before the annual meeting.

In all cases the outgoing trustee should hand over to his successor in office, circulars and all other documents and papers relating to the district.

The importance of the position that the office of trustee holds in our admirable and beneficent school system, and the influence it *must* exert in insuring the complete enforcement, or partial neglect, of its salutary provisions, cannot be too highly magnified. Upon an intelligent conception of their trusts, and a generous liberality in the discharge of them, must depend in a great measure the prosperity not only of every district, but of the schools at large.

#### SEVENTH ARTICLE.

*Of the assessment of district taxes, and the collection of such taxes ; and herein of the collector, his powers, duties and liability.*

§ 65. Within thirty days after a tax shall have been voted by a district meeting, the trustees shall assess it, and make out the tax list therefor, and annex thereto their warrant for its collection. But they may at the same time assess two or more taxes so voted, and any tax or taxes they are authorized to raise without such vote, and make out one tax list and one warrant for the collection of the whole. They shall also prefix to their tax list a heading showing for what purpose the different items of the tax is levied.

This section makes provision,

1. For the time within which a tax list shall be made out ;
2. For what shall be included in it ;
3. For the heading of it.

1. The first sentence is substantially the same as section 99, chapter 480, Laws of 1847. Of that section the supreme court said (2 *Denio*, 161): "There are no negative words in the statute, such as would necessarily make it imperative ; and in such a case, for the benefit of the public, the act may be done after the time has elapsed ; the statute, as to time, being regarded as directory only." The court remark, however : "Had it appeared, in this case, that there



was such a change in the taxable persons or property in the district, between the expiration of the month and the time the tax list was made out, a different question would have been presented. But it does not appear that there was any such change, or that the plaintiff was in any way injured by the delay." The policy of the statute is, that the tax shall affect only the persons and property subject to the authority of the meeting which imposes it, and such persons as shall voluntarily expose themselves to liability while the tax list is being made out. Land purchased after a tax is voted, but before the tax list is made out, should be assessed to the purchaser, if he has taken possession; and the seller may be taxed for the purchase-money secured by mortgage, as personal property, although he has reserved the possession to a tenant until a period which will not arrive until after the tax list is made out. Persons about to remove from the district must be included in the tax list, if inhabitants when it is completed.

By section 82 of this title the trustees are forbidden to deliver the tax list and warrant to the collector until the thirty-first day after the tax was voted. A tax list cannot be regarded as completed until it has been delivered with the warrant to the collector. While it remains in the hands of the trustees it may be altered and amended at any time. The actual making up of a tax list and warrant may be the work of a clerk or amanuensis. Although it may be in due form and contain all that is legally necessary, even to the signatures, it cannot be deemed complete until it has passed from their hands to the proper officer to collect it. There is an analogy between such a paper and a deed, mortgage or lease. They may be complete as to form and execution, but the transaction between grantor and grantee is not complete without delivery.

It is the clear duty of trustees to proceed in the making out of every tax list with such dispatch that it may be completed within thirty days, whenever practicable. It should not be postponed because circumstances may render it expedient to delay the collection.

If the copy of an appeal be served before the trustees have completed their assessment, the time during which the appeal is pending is to be deducted in counting the thirty days.

2. In regard to the *form* of a tax list, the following directions, prescribed by title 2, chapter 13, first part of the Revised Statutes, for the government of assessors, are appropriate, and it would conduce to accuracy for trustees to conform to them, whether it be strictly necessary or not.

"§ 9. They shall prepare an assessment roll, in which they shall set down in four separate columns, and according to the best information in their power:

"1. In the first column the names of all the taxable inhabitants in the town or ward, as the case may be;

"2. In the second column, the quantity of land to be taxed to each person;

"3. In the third column, the full value of such land, according to the definition of the term land, as given in the first title of this chapter.

4. In the fourth column, the full value of all the taxable personal property owned by such person, after deducting the just debts owing by him.

"§ 10. Where a person is assessed as trustee, guardian, executor or administrator, he shall be assessed as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment; and he shall be assessed for the value of

the real estate held by him in such representative character, at the full value thereof, and for the personal property held by him in such representative character, deducting from such personal property the just debts due from him in such representative character."

3. The following are suitable forms of tax list and warrant :

List of taxes apportioned by the trustees of District No. , in the town of Trenton, county of Oneida, in accordance with the provisions of article seven, title seven, of the general school law of the State of New York, for the purpose of raising the sum of \$1,081.80, laid and charged on the said district according to law, viz. : \$50 for the purchase of an additional site and \$1,000 for building thereon, voted by a district meeting on the day of , 186 , \$10 for repairs of the school-house, and \$8.20 for fuel.

NAMES OF TAXABLE INHABITANTS AND CORPORATIONS.	Quantity of land taxed.	Value of such land.	Value of taxable personal property.	Total amount of taxes.
James Thomas, .....	80 acres.	\$400	.....	\$6 81
James Thomas, executor of estate of John Thomas, deceased, .....	.....	.....	\$1,025	17 45
Clark Cotton Manufacturing Company, .....	5 acres.	1,250	25,000	446 91
John Davison, .....	$\frac{1}{4}$ acres.	625	.....	10 64

Statement and description of unoccupied and unimproved lands of non-residents of said district on which a tax has been imposed as above stated :

NO. AND DESCRIPTION OF LOTS AND PARTS OF LOTS.	Quantity of land therein liable to taxation.	Valuation of such quantity.	Amount of tax.
No. 17, short tract, .....	10 acres.	\$25 00	\$0 75
That part of the south-west quarter of lot No. 23, short tract, which lies east of a line running north 43° west from the south-east corner of lot No. 12, in the same tract, being the district boundary line, .....	2 $\frac{1}{2}$ acres.	6 00	18

To the collector of school district No. \_\_\_\_\_, in the town of \_\_\_\_\_  
county of \_\_\_\_\_ :

You are hereby commanded to *receive* from each of the taxable inhabitants and corporations named in the foregoing list, and of the owners of the real estate described therein, the several sums mentioned in the last column of the said list, opposite to the persons and corporations so named, and to the several tracts of land so described, or so much thereof as may be voluntarily paid to you for two successive weeks after the delivery to you of this warrant, together with one cent on each dollar thereof for your fees; and, after the expiration of the time above mentioned, to proceed forthwith to *collect* the residue of the sums not so paid in as aforesaid, with five cents on each dollar thereof for your fees; and in case any person upon whom such tax is imposed shall neglect or refuse to pay the same, you are to levy the same by distress and sale of the goods and chattels of the person or corporation so taxed, in the same manner as on warrants issued by the board of supervisors to the collectors of taxes in towns; and you are to make a return of this warrant within *thirty* days after the delivery thereof to you; and, if any tax on the real estate of a non-resident mentioned in the said list shall be unpaid at the time when you are required to return this warrant, you are to deliver to the trustees of the said district an account thereof, according to law. All moneys received or collected by you by virtue of this warrant, you are to keep safely, and to pay out the same on the written order of a majority of the trustees.

Given under our hands this \_\_\_\_\_ day of \_\_\_\_\_, in the year one thousand eight hundred and sixty-

A. B., }  
C. D., } *Trustees.*  
E. F., }

When the tax has been levied and assessed by all the trustees, their judicial duties are at an end; it is unimportant whether all are present at the signing of the warrant, which is but a ministerial act. (19 *Barb.*, 167.) It is because the issuing of the warrant is a ministerial act, and the statute prescribes the legal effect of the process, that the trustees will be trespassers if they adopt a form which departs from it and directs the collector to act otherwise than the law directs. (16 *Wend.*, 607.) The collector acts for two weeks after the delivery of the warrant as mere *receiver* of taxes; if he undertakes to levy upon property within that time, he becomes a trespasser. (17 *Barb.*, 147.)

The statute no longer prescribes thirty days, or any other period, within which the warrant shall be made returnable (18 *Barb.*, 331); but the trustees must prescribe a time in the warrant, and should not depart from the former usage except for strong reasons.

§ 66. In making out a tax list, the trustees of school districts shall apportion the same on all taxable inhabitants of the district, and upon corporations and persons holding property therein, according to the valuation of the taxable property which shall be

owned or possessed by them at the time of making out such list within such district, or partly within such district, and partly in an adjoining district, and upon all unoccupied real estate lying within the boundaries of such district, the owners of which shall be non-residents, and which shall be liable to taxation for town or county purposes; and upon the amount of rents reserved in any leases in fee, or for one or more lives, or for a term of years exceeding twenty-one years, and chargeable upon lands within such district, which rents shall be assessed to the person or persons entitled to receive the same as personal estate, which it is hereby declared to be, for the purpose of taxation for school purposes, at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents; and in case such rents are payable in any other thing except money, the value of such annual rents in money shall be ascertained by the trustee or trustees, and the same shall be assessed in manner aforesaid. But when it shall be ascertained that the proportion of any tax upon any lot, tract or parcel not occupied by any inhabitant, or upon rents reserved, would not amount to fifty cents, the trustees, in their discretion, may omit such lot, tract or parcel, or reserved rents, from the tax list. Banks or banking associations, organized under the laws of Congress or of this State, shall be taxed by assessing the individual stockholders for the amount of stock owned or possessed by them; but such assessment shall be made only in the district where the bank is located. And it is hereby made the duty of the president or cashier of any such banking association, or of the person temporarily performing the duties of either of them, to furnish to the trustee or trustees, or board of education of the school district in which the bank of such association is located, whenever the same shall be called for, for the purpose of making out a tax list for the collection of a district tax, a list of all persons and bodies corporate, owning or holding stock in said bank, which list shall also show the amount of stock owned or held by each such person or body corporate. A refusal to comply with the requirements of this section, by the officers of any such banking association herein named, shall be punished by a fine of not less than fifty nor more than two hundred dollars for each and every refusal, to be sued for by the supervisor of the town in which the bank of such association is located, in his name of office; which

penalty, when collected, shall be for the benefit of the school district in which such bank is located. Individual bankers shall be assessed in accordance with the provisions of section 2 of chapter 761 of the Laws of 1866.

The statute requires the trustees to ascertain and determine who are taxable inhabitants *at the time of making out the tax list*, and to apportion the tax on the persons and corporations then holding property in the district, without regard to the time when the same was voted, and without discrimination on account of the purpose for which it was voted, except that in favor of any inhabitants under section 73, of this title.

The personal property of all persons actually residing in the district is taxable therein, wherever such personal property may be situated. As an exception to this rule, the shares in banks and banking associations are taxable only in that district in which the bank is located. It is also provided, by chapter 37 of 1855, that "all persons and associations doing business in the State of New York, as merchants, bankers or otherwise, either as principals or partners, whether special or otherwise, and not residents of this State, shall be assessed and taxed on all sums invested in any manner in said business, the same as if they were residents of this State, and said taxes shall be collected from the property of the firms, persons or associations to which they severally belong."

Non-residents, taxable under the above cited statute, are to be deemed taxable inhabitants of the district in which they may be doing business. If the owners or their agents become temporary sojourners in the State, for the purpose of managing such business, their residence for the purpose of such taxation is defined in the following statute:

"§ 5. Every person shall be assessed in the town or ward where he resides when the assessment is made, for all personal estate owned by him, including all personal estate in his possession or under his control as agent, trustee, guardian, executor or administrator; and in no case shall property, so held under either of these trusts, be assessed against any other person; and in case any person, possessed of such personal estate, shall reside, during any year in which taxes may be levied, in two or more counties, towns or wards, his residence, for the purposes and within the meaning of this section, shall be deemed and held to be in the county, town or ward in which his principal business shall have been transacted; but the products of any State of the United States, consigned to agents in any town or ward of this State, for sale on commission, for the benefit of the owner thereof, shall not be assessed to such agent, nor shall such agents or moneyed corporations or capitalists be liable to taxation under this section, for any moneys in their possession or under their control transmitted to them for the purposes of investment or otherwise." (*Title 2, chapter 13, part 1st Revised Statutes, as amended by section 2, chapter 176 of 1851.*)

The Revised Statutes "of the assessment and collection of taxes," in title 1 of the same chapter from which the preceding quotation is taken, contain the following provisions:

"§ 2. The term 'land,' as used in this chapter, shall be construed to include the land itself, all buildings and other articles erected upon or affixed to the same, all trees and underwood growing thereon, and all mines, minerals, quarries and fossils, in and under the same, except mines belonging to the State; and the terms 'real estate' and 'real property,' whenever they occur in this chapter, shall be construed as having the same meaning as the term 'land' thus defined.

"§ 3. The terms 'personal estate' and 'personal property,' whenever they occur in this chapter, shall be construed to include all household furniture, moneys, goods, chattels, debts due from solvent debtors, whether on account, contract, note, bond or mortgage, public stocks and stocks in moneyed corporations. They shall also be construed to include such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

"§ 4. The following property shall be exempt from taxation :

"1. All property, real or personal, exempted from taxation by the Constitution of this State or under the Constitution of the United States ;

"2. All lands belonging to this State or the United States ;

"3. Every building erected for the use of a college, incorporated academy or other seminary of learning ; every building for public worship, every school-house, court-house and jail ; and the several lots whereon such buildings are situated, and the furniture belonging to each of them ;

"4. Every poor-house, almshouse, house of industry, and every house belonging to a company incorporated for the reformation of offenders, and the real and personal property belonging to or connected with the same ;

"5. The real and personal property of every public library ;

"6. All stocks owned by the State or by literary or charitable institutions ;

"7. The personal estate of every incorporated company not made liable to taxation on its capital in the fourth title of this chapter ;

"8. The personal property of every minister of the gospel, or priest of any denomination ; and the real estate of such minister, or priest, when occupied by him, provided such real and personal estate do not exceed in value one thousand five hundred dollars ; and

"9. All property exempted by law from execution.

"§ 5. If the real and personal estate, or either of them, of any minister or priest exceed the value of one thousand five hundred dollars, that sum shall be deducted from the valuation of his property, and the residue shall be liable to taxation.

"§ 6. Lands sold by the State, though not granted or conveyed, shall be assessed in the same manner as if actually conveyed.

"§ 7. The owner or holder of stock in any incorporated company liable to taxation on its capital shall not be taxed as an individual for such stock."

Land set apart, and a portion of which has been actually used, for a family or private burying ground, not exceeding one-quarter of an acre, and provided a description of the same has been made and duly acknowledged and recorded in the county clerk's office, is also exempt. (*Laws of 1847, chapter 85, sections 1 and 2.*)

The exemption from taxation of every building for public worship, and every school-house and other seminary of learning, under the provisions of subdivision 3 of section four, title 1, chapter 13 of part first of the Revised Statutes, or amendments thereof, shall not apply to any building or premises in the city of New York, unless the same shall be exclusively used for such purposes, and exclusively the property of a religious society, or of the New York Public School Society. (*Laws of 1852, chapter 282.*)

No tax or assessment shall at any time be imposed, assessed or collected upon the mint or branch mint of the United States, which may be authorized by act of Congress to be established in the city of New York; neither upon the land on which the buildings used or to be used therefor shall or may be erected, nor upon the buildings used or to be used therefor, nor upon the machinery used or to be used therein, nor upon bullion or metal deposited for coinage, nor upon the coin stamped at said mint or branch mint, while in the custody of the officers of said mint or branch mint of the United States in the city of New York. (*Laws of 1852, chapter 46.*)

No assessment or tax of any description, general or local, shall be imposed, assessed or collected upon the assay office of the United States, which, by act of Congress of March, 1853, it is provided shall be established in the city of New York; neither upon the land owned by the United States on which the building used or to be used therefor shall be erected; nor upon the buildings used or to be used therefor; nor upon the machinery used or to be used therein; nor upon the metal, bullion or coin deposited for melting, remelting or assaying; nor upon the bars or ingots, after melting, remelting or assaying, while the same is in the custody, possession or under the control of the officers of the assay office of the United States in the city of New York. (*Laws of 1853, chapter 406.*)

All lands now held or which may hereafter be held by any agricultural society in this State, and permanently used for show grounds by any such society, shall be exempt from taxation during the time so used. (*Laws of 1856, chapter 183.*)

No tax shall hereafter be assessed or imposed on either of said reservations (Allegany or Cattaraugus reservations), or on any part thereof, for any purposes whatever, so long as said reservations remain the property of the Seneca nation; and all acts of the Legislature of this State conflicting with the provisions of this section are hereby repealed. (*Laws of 1857, chapter 45, section 4.*)

From and after the passage of this act, the lands of the corporation "The Sackett's Harbor and Saratoga Railroad Company," by whatever name the said corporation may hereafter be lawfully called, or which it shall hereafter acquire on existing contracts or existing pre-emption rights, shall be free and exempt from all taxation until the twelfth day of September, one thousand eight hundred and seventy-nine; but this section shall not apply to the road bed or track, nor to the lands occupied or used for structures necessary to the working of its road, nor to any lands after the same shall be sold by said corporation. (*Laws of 1857, chapter 98, section 1.*)

It is also provided by section 5, chapter 546 of 1855, that "toll-houses and other fixtures, and all property belonging to any plank or turnpike road company, shall be exempt from assessment and taxation for any purpose whatever, until the surplus annual receipts of tolls on their respective roads, over necessary repairs, and a suitable reserve fund for repairs and relaying of plank, shall exceed seven per cent per annum on the first cost of such road. In case of any disagreement between the assessors of any town, village or city and any such company concerning such exemption claimed, said company may appeal to the

county judge of the county in which such assessment is proposed to be made, who shall, after due notice to the appealing party of such appeal, examine the books and vouchers of such company, and take such further proofs as he shall deem proper, and shall decide whether such company is liable to taxation under the section, and his decision shall be final." (*Session Laws of 1855*, p. 1044.)

Section 146 of chapter 477, Laws of 1862 (the Military Code), as amended by chapter 502, Laws of 1867 (*vol. 2*, p. 1295), exempts \$500 of the property of certain persons therein named, and \$1,000 of others.

§ 146. Every non-commissioned officer, musician or private of the national guard of this State, shall be holden to do duty therein for the term of seven years from his enlistment, unless disability after enlistment shall incapacitate him to perform such duty, or he shall be regularly discharged by the commandant of his regiment; all general and staff officers, all field officers, all commissioned and non-commissioned officers, musicians and privates of the organized national guard of this State, shall be exempt from jury duty during the time they shall perform military duty, and shall be entitled to a deduction in the assessment of their real and personal property to the amount of five hundred dollars each, except cavalymen, artillerymen and mounted officers, who shall be entitled to a deduction of one thousand dollars on all classes of taxes. And every person who shall have so served seven years, and shall have been honorably discharged as required by this section, shall forever after, as long as he remains a citizen of this State, be exempt from jury duty. No non-commissioned officer, musician or private in the national guard shall be discharged from service, except for physical disability or expiration of term of service. Discharges for physical disability shall be given only upon the certificate of the regimental surgeon; and no member of any company shall be discharged from service except upon the certificate of the commanding officer of his company, that such member has turned over or satisfactorily accounted for all property issued to and charged to him. Commanding officers of regiments shall make returns through intermediate officers, to the Adjutant-General, on the first day of January and July in each year, of all discharges granted by them during the previous six months, giving names and grades of the persons so discharged, and the causes for which discharged.

Under the provision for taxing rents reserved, it has been decided (4 *Barb.*, 12), that "The tax is to be assessed in the town where the lands lie. In this respect it is like a tax on real estate, and not like that on personal estate, which follows the residence of the person whose property is assessed." In that case it was held that the valuation of the assessors might be corrected by the affidavit of the person assessed, and, as was also held in 7 *Barb.*, 251, that all leases are included within the act which originally had more than twenty-one years to run, notwithstanding the term remaining unexpired at the time the assessment is made may be less than twenty-one years; in other words, the rents reserved under such a lease continue to be taxable till the expiration of the term. It was held, in 8 *Barb.*, 23, that the tenant was not liable to pay to the landlord taxes assessed upon such rents under a lease in perpetuity, though the lease contained a covenant binding the tenant to pay any taxes assessed upon the premises or upon the landlord, his heirs, etc., *for and in respect to the premises*.

"§ 1. All debts, owing by inhabitants of this State to persons not residing within the United States, for the purchase of any real estate, shall be deemed



personal property, within the town or county where the debtor resides, and as such shall be liable to taxation in the same manner and to the same extent as the personal estate of citizens of this State." (*Laws of 1851, chap. 371, p. 721.*)

The debt taxable under this section must be for the purchase of real estate, and is to be taxed in the district where the debtor resides, irrespective of the fact that the real estate may lie elsewhere.

In regard to real estate, they are taxable inhabitants who, living in the district, own or possess any land therein; that is to say, all persons who have the general property in the soil, and all persons who occupy it as tenants having a temporary right to its possession under a landlord. The latter, although only tenants at will, may be assessed for the land in their occupation, as appears from section 70, of this title. The distinction is between a tenant, for however brief a period, who occupies the land for his own profit and is entitled to a notice to quit before he can be divested, and a mere agent or servant, managing the land or employed upon it for the profit of another, under wages and without any title to the possession of the land or to its products. In respect to land within the district occupied by such agents, the employer, whether holding the fee or a leasehold estate, and though residing outside of the district, is declared by section 71, of this title, to be a taxable inhabitant in respect to the liability of such property to taxation, in the same manner as if he actually resided within its bounds.

After completing the enumeration of taxable inhabitants as defined by the various provisions above cited, and which may include sundry persons not residing in the district, the trustees are to inquire whether there are any lands lying within the boundaries of such district which are liable to taxation for town or county purposes, the owners of which are non-residents, and which lands are not occupied by a tenant (who would himself be taxable) or improved by an agent or servant, whose occupation would render the owner not a non-resident, in the sense of the law for the purpose of taxation, although in fact residing in some other district. The following directions to the assessors in reference to the mode of designating the lands of non-residents, in title 2, chapter 13, first part of the Revised Statutes (and which are of course to be followed by trustees when they find it necessary to make an original assessment) show that it is only unoccupied land which is to be so regarded:

"§ 11. The lands of non-residents shall be designated in the same assessment roll, but in a part thereof separate from the other assessments, and in the manner prescribed in the two following sections:

"§ 12. If the land to be assessed be a tract which is so subdivided into lots, or be part of a tract which is so subdivided, the assessors shall proceed as follows:

"1. They shall designate it by its name, if known by one, or if it be not distinguished by a name, or the name be unknown, they shall state by what other lands it is bounded;

"2. If they can obtain correct information of the subdivisions, they shall put down in their assessment rolls, and in a first column, all the unoccupied lots in their town or ward, owned by non-residents, by their numbers alone and without the name of their owners, beginning at the lowest number and proceeding in numerical order to the highest;

"3. In the second column, and opposite to the number of each lot, they shall set down the quantity of land therein liable to taxation ;

"4. In a third column, and opposite to the quantity, they shall set down the valuation of such quantity ;

"5. If such quantity be a full lot, it shall be designated by the number alone ; if it be a part of a lot, the part must be designated by boundaries, or in some other way by which it may be known.

"§ 13. If the land so to be assessed be a tract which is not subdivided, or if its subdivisions cannot be ascertained by the assessors, they shall proceed as follows :

"1. They shall enter in their roll the name or boundaries thereof, as above directed, and certify in the roll that such tract is not subdivided, or that they cannot obtain correct information of the subdivisions, as the case may be ;

"2. They shall set down in the proper column the quantity and valuation as above directed ;

"3. If the quantity to be assessed be the whole tract, such description by its name or boundaries will be sufficient ; but if a part only is liable to taxation, that part, or the part not liable, must be particularly described ;

"4. If any part of such tract be settled and occupied by a resident of the town or ward, the assessors shall except such part from their assessment of the whole tract, and shall assess it as other occupied lands are assessed."

The residue of the section relates to the making of a map, which is supposed not to be applicable to trustees of school districts ; if a map is already on file, the trustees may refer to it in aid of their descriptions.

Without amending the sections above quoted, the Legislature, by section 1, chapter 176 of 1851, declared that "Land occupied by a person other than the owner may be assessed to the owner or occupant, or as non-resident land." It is not easy to reconcile the apparent conflict ; and, as the statute last mentioned is merely permissive, it will be safest for trustees to treat as non-resident lands only those which are unoccupied, or, at most, so occupied that there is no prospect of collecting the tax otherwise than by the sale of the land.

It is the general rule that, if "assessors should assume to assess land lying in another town or ward, their act would unquestionably be void for want of jurisdiction." (7 *Barb.*, 129.) The same general rule applies to trustees in making an original assessment, or in selecting from the town assessment roll the lands to be included in a district tax list. To make an assessment legal they must have jurisdiction of the particular case. If they transcend the limits of their authority, and undertake to assess property exempt by statute, they cease to be judges, and are responsible for all the consequences. A public officer is not responsible, in a civil suit, for a judicial determination in a matter over which he had jurisdiction, however erroneous it may be, but no officer can acquire jurisdiction by deciding that he has it. (5 *Barb.*, 611 ; and see 19 *Barb.*, 22.) The statute gives them jurisdiction, as to the land lying outside of the territorial limits of their district, only by directing them to apportion the tax "according to the valuation of the taxable property which shall be owned or possessed by them (taxable inhabitants) at the time of making out such list within such a district, or partly within such district and partly within an adjoining district." The statute evidently contemplates a single parcel of land, in the possession of a single occupant, which is intersected by the boundary line of

two districts. If the possession is severed, as if the land is owned by the same person, but the part within the district is occupied by the owner and that which lies outside the district by a tenant, or *vice versa*, or if the respective parts are occupied by different tenants of the same owner, or if one of them only is occupied by a tenant and the other is vacant and unimproved, then the respective parcels are to be taxed, each in the district within whose boundaries it is actually contained. So, if one of the parcels is occupied by a person as owner, and the other is also occupied by him as tenant of a third person, the parts must be taxed in the districts containing them respectively, for the trustees of the district containing the portion under lease have the right to assess it to the *owner*, disregarding the occupant. The statute, moreover, requires something more than the imaginary contact of the two parcels in a mathematical point, as where they have only an angle in common. They should be so connected as to have at least a *line* of contact, and not a mere point. Where, however, two parcels in the possession of the same owner are separated only by a public highway, the fee of which he owns, subject to the right of passage in the public, this is not to be regarded as preventing their contact.

There are serious difficulties growing out of the fact that the statute, under the most restricted interpretation that can be put upon it, sometimes permits the resources of a district to be weakened by the purchase of a part of its territory by the inhabitants of an adjoining district. Though the district boundaries are not thereby altered, yet, for the eminently practical object of taxation, the result is the same as if they were.

In respect to property exempt from taxation, it has been decided that a minister of the gospel, or priest, to bring himself within the exemption, must show that the value of both his real and personal property did not exceed \$1,500, and *it seems* that only that sum is to be deducted from the valuation of both, and not \$1,500 from the valuation of each, if each exceeded that amount. (5 *Barb.*, 609.) The latter point, however, was not necessarily involved in the decision.

The land owned by a minister of the gospel, if *rented*, can be taxed to the tenant. It is exempt from taxation to a certain extent, *only when occupied by such minister*. If, however, the occupant is the *agent* merely of the minister, so as to render it necessary to make out the assessment against the latter as owner, the property is then exempt.

Land *occupied* by a minister of the gospel, as *tenant*, may be assessed to the owner, but not to the minister. The exemption is personal to the minister, and does not avail the owner.

The court of appeals held (3 *Kernan*, 220) that the school-houses referred to in the statute exempting property from taxation are those used for the public common schools, and that buildings erected and used for private unincorporated seminaries of learning, or for boarding schools, are not exempt—overruling a *dictum* in 1 *Seld.*, 376.

Wherever reference is made in the Revised Statutes, and in former Session Laws, and in this volume, to the taxation of banking companies and the

owners and holders of stock therein, the reference must be held subject to chapter 761, Laws of 1866, which provides for the assessment and taxation of the shares of all banks, to the owners thereof, in the place, town or ward, where the bank, or banking association, is situated. That portion of section 66 relating to banks and banking associations is a transfer to the school law of the first section of said chapter 761, modified so as to make it applicable to school districts.

Chapter 761, of 1866, was passed in conformity with the decision of the supreme court of the United States (3 *Wallace's R.*, 573) that "the act of June 3, 1864, "to provide a national currency," etc., rightly construed, subjects the shares of the banking associations authorized by it, and in the hands of shareholders, to taxation by the States, under certain limitations (set forth in its forty-first section) without regard to the fact that a part or the whole of the capital of such association is invested in national securities, declared, by the statutes authorizing them, to be "exempt from taxation by or under State authority."

The town assessment rolls will contain an assessment of all taxable shares of banks, banking associations, and individual bankers, and for such shares the trustees will copy the town roll in the same manner and to the same extent as for all other taxable property.

§ 67. The valuations of taxable property shall be ascertained, so far as possible, from the last assessment roll of the town, after revision by the assessors; and no person shall be entitled to any reduction in the valuation of such property, as so ascertained, unless he shall give notice of his claim to such reduction to the trustees of the district before the tax list shall be made out.\*

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\* The trustees have heretofore had to assess the property of railroads within the limits of their districts according to their own judgment as to its valuation. The frequent disputes between trustees and railroad companies, about the relative proportion of valuation to be assigned to each district, have led to the passage of the following law. It will be necessary for trustees, before including a railroad in their tax lists, to ascertain from town assessors if they have made the apportionment required by this law. If they have not, then the trustees may call upon the supervisor to do it, by virtue of section three.

"Chapter 694. An act in relation to the valuation of the property of railroad companies in school districts, for the purpose of taxation; passed April 23, 1867, three-fifths being present. Sec. 1. It shall be the duty of the town assessors, within fifteen days after the completion of their annual assessment list, to apportion the valuation of the property of each and every railroad company as appears on such assessment list among the several school districts in their town, in which any portion of said property is situated, giving to each of said districts their proper portion, according to the proportion that the value of said property in each of such districts bears to the value of the whole thereof in said town. § 2. Such apportionment shall be in writing, and shall be signed by said assessors, or a majority of them, and shall set forth the number of each district and the amount of the valuation of the property of each railroad company, apportioned to each of said districts; and such apportionment shall be filed with the town clerk, by said assessors or one of them, within five days after being made; and the amount so apportioned to each district shall be the valuation of the property of each of said companies, on which all taxes against said companies in and for said districts shall be levied and assessed, until the next annual assessment and apportionment. § 3. In case the assessors shall neglect to make such apportionment, it shall be the duty of the supervisor of the town, on the application of the trustees or board of education of any district, or of any railroad company, to make such apportionment, in the same manner and with the like effect as if made by said assessors.

The first duty of trustees is to determine who are the taxable inhabitants of the district. In doing this they may find some persons not named in the town assessment roll. Some of them may be taxable, as the possessors of property which has been valued in that roll, and which belonged to other persons at the time it was made out. In the valuation of *such* property, the trustees are to be governed by the assessment roll. They are not to reduce it, unless the new owner shall give notice of his claim to such reduction *before* the tax list shall be made out, and they are not to reduce it without giving the notice provided by the next section. To reduce the valuation of one is precisely equivalent to raising that of every other taxable inhabitant, for it increases his quota of the tax. He cannot be subjected to such increase of taxation, beyond what his share would be according to the last town assessment roll, without being put upon his guard by the posting of a notice. (1 *Denio*, 214.)

Other persons may be found to be taxable on account of their possession of property, real or personal, for which no person was assessed on the town assessment roll. Such property may be real estate casually overlooked by the assessors, or purposely omitted because it was then exempt by being occupied by a minister of the gospel, or for any other reason; or it may consist in accessions to real estate, to put an uncommon case: land formed by the gradual washing up of sand on the shore of the sea or of our great lakes, which belongs to the owner of the adjacent bank, or an island formed in the bed of a river not navigable, which is to be divided according to the original thread of the river between the proprietors on the opposite banks, or to him on whose side of the original thread it lies (17 *Pick.*, 41), or in improvements, such as the building of a house or barn, not completed when the town assessment was made. Or the property may be personal, arising from the sale of real estate within the district, or the acquisition of personal estate by devise or otherwise to an inhabitant of the district, such property not being in the district, but following the person of its owner for the purpose of taxation. In all these cases an original valuation by the trustees is to be made, and a notice is necessary. Additions to the last assessment roll, in consequence of buildings subsequently erected, should not be made by the trustees until they are so far completed that their value is not contingent and uncertain. (*Com. School Dec.*, 194.)

Trustees cannot assess an individual for personal property, if he has been taxed for none on the last assessment roll of the town, on the mere *supposition* that he may have more than his debts amount to. The assessment roll of the town settles the matter, and the trustees cannot vary the amount but from some *knowledge* of an alteration after that roll was made out, or to correct some known and acknowledged error.

But if the trustees have actual knowledge that any person residing in the district has personal property liable to taxation, not assessed upon the town

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§ 4. The town clerk shall, whenever requested, furnish to the trustees or board of education of each district, a certified statement of the amounts apportioned to such district, and the name of the company to which the same relates. § 5. In case any alteration shall be made in any school district, affecting the property of any railroad company, the officer making such alteration shall, at the same time, determine what change in the valuation of the said property in such district would be just, on account of the alteration of district, and the valuation shall be accordingly changed."

roll. their duty is to include it in the tax list, giving notice to the person so assessed, so that he may obtain a reduction if the assessment be too much.

The principle on which our laws rest in the taxation of personal property is that a man must be taxed only for what he is actually worth. Hence, he is permitted to set off his debts against his personal property in possession, and is taxable for the excess.

If a man be the owner of \$15,000 in bonds and mortgages, and \$15,000 in United States bonds, and at the same time is indebted in the sum of \$15,000, he cannot be allowed to set off his indebtedness against his bonds and mortgages, and so claim that he has no taxable personal property. The only legal mode of ascertaining his liability is to deduct his whole indebtedness from the total of his personal property—his \$15,000 from \$30,000—leaving him liable to assessment for \$15,000.

The vendor of a farm remaining in possession is liable for taxes assessed on it.

If a taxable inhabitant sells his farm and remains in the district, he is liable to be taxed on the amount of the purchase-money paid, or secured to be paid, as personal property (unless he shows that, notwithstanding the increase of his personal property, its value is still exceeded by his debts), and the purchaser is taxable for the farm according to its assessed value on the last assessment roll of the town.

Where land, owned by the same person, is situated in different districts in the same town, but all included under one assessment by the town assessors, if all the land is of the same *description*, and was actually valued at the same rate per acre, without any variation on account of improvements or otherwise, or if it appears on the roll at what rates the separate parts were valued, then the valuation of the portion situate in any particular district may be ascertained by the trustees from such last assessment roll. But if the valuation by the town assessor was *general*, and if the land was of different degrees of quality or value, or if a dwelling-house or other improvements are situated in one district and none in another, a new and original assessment must in such case be made, by the trustees giving the notices, etc., and proceeding in the mode required by law.

Where a person, assessed for a greater number of acres than his farm contains, omits to claim a reduction when the tax is assessed by the trustees, he will not be relieved subsequently on appeal. (*Com. School Dec.*, 341.)

§ 68. Where such reduction shall be duly claimed, and where the valuation of taxable property cannot be ascertained from the last assessment roll of the town, the trustees shall ascertain the true value of the property to be taxed from the best evidence in their power, giving notice to the persons interested, and proceeding in the same manner as the town assessors are required by law to proceed in the valuation of taxable property.

The trustees, proceeding in the same manner as town assessors, should first ascertain the true value of the property to be taxed, according to their judgment. The rule prescribed by the Revised Statutes, as amended by section 3, chapter 176 of 1851, is:

"All real and personal estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor." (*Session Laws of 1851, p. 333.*)

After having completed a tax list, by taking the valuations from the town assessment roll, where it furnishes them, and having added thereto such original assessments as in their judgment are required, the statute directs that the assessors (and consequently, by the above sections, the trustees) "shall make out one fair copy thereof, to be left with one of their number. They shall also forthwith cause notices thereof to be put up at *three* or more public places in the district." When the trustees copy the town assessment roll, and make no alteration in it, the public notice required of town assessors need not be given by them.

"Such notices shall set forth that the assessors have completed their assessment roll, and that a copy thereof is left with one of their number, at a place to be specified therein, where the same may be seen and examined by any person interested, until the third Tuesday of August; and that on that day the assessors will meet, at a time and place also to be specified in such notice, to review their assessments. On the application of any person conceiving himself aggrieved, it shall be the duty of the said assessors on such day to meet, at the time and place specified, and hear and examine all complaints in relation to such assessments that may be brought before them; and they are hereby empowered and it shall be their duty to adjourn from time to time, as may be necessary, to hear and determine such complaints." (*Session Laws of 1851, p. 333.*)

The notice to be given by trustees necessarily varies somewhat from that of assessors, and may be in the following form:

Notice is hereby given, that the trustees of school district No. , in the town of , have completed their tax list to raise the sum of \$10 for repairs of school-house, \$8 to furnish the same with the necessary fuel (enumerating the several taxes included in the list), and that a copy thereof is left with the undersigned, A. B., at his office (mill, dwelling-house, or as the case may be), where the same may be seen and examined by any person interested, during twenty days from the date of this notice; and that said trustees will meet at the house of , in said district, on the day of next, (specifying a day subsequent at least twenty-one days to the posting) at o'clock, in the noon, to review the said tax list, on the application of any person conceiving himself aggrieved.

Dated this day of , 18 .

A. B.,  
C. D., } Trustees of District No. .  
E. F., }

"§ 5. If the assessors shall willfully neglect to hold the meeting specified in the last preceding section, each assessor so neglecting shall be liable to a penalty of twenty dollars, to be sued for and recovered before any court having jurisdiction thereof by the supervisor of the town, for the use of the poor of the same town; and in case of such neglect to meet for review, any person aggrieved by the assessment of the assessors may appeal to the board of supervisors at their next annual meeting, who shall have power to review and correct such assessment." (*Session Laws of 1851, p. 333.*)

Query, whether the provision for an appeal to the board of supervisors is applicable to a school district tax. Even if it is there is no provision for suspending the proceeding, for collection upon such an appeal.

The trustee with whom the tax list is left is required by law to "submit the same, during the twenty days specified in such notice, to the inspection of *all* persons who shall apply for that purpose."

The provisions of the Revised Statutes, in regard to the proceedings to be had where application is made for a reduction of the valuation, have been materially varied by the following sections of chapter 176 of 1851:

"§ 6. Whenever any person, on his own behalf or on behalf of those whom he may represent, shall apply to the assessors of any town or ward to reduce the value of his real and personal estate, as set down in their assessment roll, it shall be the duty of such assessors to examine such person under oath touching the value of his or their said real or personal estate, and after such examination they shall fix the value thereof at such amount as they may deem just; but if such person shall refuse to answer any question to the value of his real or personal estate, or the amount thereof, the said assessors shall not reduce the value of such real or personal estate. The examination so taken shall be written, and shall be subscribed by the person examined, and shall be filed in the office of the town clerk of the town or city in which such assessment shall be made; and any person who shall willfully swear falsely, on such examination before the assessors, shall be deemed guilty of willful and corrupt perjury.

"§ 7. The assessors of the several towns and wards of this State shall have power to administer oaths to any person applying to them, under the provisions of the sixth section of this act."

Formerly, upon the making of an affidavit, by a person asking a reduction, that the value of his personal estate did not exceed a given sum, the assessors and trustees were bound to reduce his assessment to the amount fixed by him. Under the preceding sections they are required, instead of taking a mere affidavit, to examine him orally, under oath to make true answers to such questions as shall be put to him touching the value of his real or personal estate. They are at liberty to put any question, the answer to which may assist them in arriving at a correct conclusion on the subject, and are not at liberty to reduce his valuation, if he refuses to answer. An affidavit without the examination, or without the examination being reduced to writing, is of no avail as evidence to reduce the valuation. (12 *How. Proc. R.*, 237.) After the examination, the *assessors* are to fix the valuation, and are not limited to that fixed by the person examined.

The provision of section 6, chapter 176 of 1851, above cited, relates as well to those persons who apply for a reduction of assessments against them in a



representative character, as executors, etc., as to those who ask it in their own behalf. They are entitled to a deduction for debts due from them in their representative character, and are to be examined as to the valuation of the property under their control, as such representatives, in the same manner as if it belonged to them in their private capacity.

§ 69. Where a district embraces parts of more than one town, the supervisors of the towns so in part embraced, upon application of the trustees of such district, or of those persons liable to pay taxes upon real property therein, shall proceed to inquire and determine whether the valuation of real property upon the several assessment rolls of said towns are substantially just, as compared with each other, so far as said district is concerned, and, if determined not to be so, they shall determine the relative proportion of taxes that ought to be assessed upon the real property of the parts of such district lying in different towns, and the trustees of such district shall thereupon assess the proportions of any tax thereafter to be raised, according to the determination of said supervisors, until new assessment rolls of the town shall be perfected and filed, upon like application, using the assessment rolls of the several towns to distribute the said proportion among the persons liable to be assessed for the same. In cases where two supervisors shall be unable to agree, they shall summon a supervisor from some adjoining town, who shall unite in such inquiry and determination.

The supervisors of the towns, parts of which are included in any district composed of parts of two or more towns, may act under this section, upon the written application of its trustees or taxable inhabitants. The power would be practically nugatory, if its exercise depended upon the application of a majority of the inhabitants. In determining the proportion of taxes to be levied upon the respective parts of such district, the simplest form will be to state how many cents in the dollar, of each tax, shall be levied upon the real property of one part, and how many upon the other. A record of this determination should be made in duplicate or triplicate, according to the number of towns; each should be signed by the supervisors, and one copy filed in the clerk's office of each town. It may be in the following form, and should have annexed to it the original application upon which it was made, evidence of which is necessary to uphold the order. (21 *Barb.*, 210.)

In the matter of the equalization of assessments for school purposes, in District No. , of the towns of , in county, and in county.

Application having been made to the supervisors of the towns of and , by persons liable to pay taxes in school district No. of said towns (or by the trustees), to inquire whether the valuations of real property upon the several assessment rolls of said towns are substantially just, as compared with each other, so far as such district is concerned, and the said supervisors being unable to agree, having summoned J. D., Esq., supervisor of the adjoining town of , to unite in such inquiry, and a meeting of said supervisors having been held for that purpose, at which were present A. B. and C. D. (and E. F., having been duly notified, failed to attend), and it having been determined that such valuations are not substantially just, as compared with each other, it was then and is hereby determined that the relative proportion of taxes that ought to be assessed upon the real property of parts of such districts lying in different towns is as follows, viz.: Thirty-one cents in each dollar to be assessed upon the real property of said district should be assessed upon the part lying in the town of , and sixty-nine cents in the dollar upon the part lying in the town of .

Dated this day of , 18 .

A. B., *Supervisor of* .

C. D., *Supervisor of* .

This determination does not affect the assessment of personal property. The trustees must, therefore, proceed as follows: Taking the aggregate of the valuations of real and personal estate in the district, as ascertained from the town assessment rolls (after making any additions of personal property found proper by the trustees), they are to determine how much of the tax is to be assessed upon the personal and how much upon the real estate. It may thus, for example, be found that of a tax of \$400, \$73 will be chargeable on the personal estate. The residue, \$327, is then to be assessed, thirty-one per cent of it, or \$101.37, on the real property in one town, and sixty-nine per cent, or \$225.63, on that in the other, using the assessment roll of each town to determine the proportion which each person resident therein is to be assessed for real or personal property.

§ 70. Any person working land under a contract for a share of the produce of such land, shall be deemed the possessor, so far as to render him liable to taxation therefor in the district where such land is situate.

The meaning of this section is believed to be, that a *tenant*, working land and paying a share of the produce as rent, is taxable, and not that a servant or agent is taxable who agrees to take a share of the produce as his *wages* for

working the land. It may sometimes be a little difficult to ascertain whether the relation is that of landlord and tenant, or that of master and servant. (15 *Barb.*, 597.) It being the policy of the law (as will be apparent from section 72 of this title) that a landlord leasing for a short term should pay the school taxes for permanent objects, unless there is an express agreement to the contrary, it will be safest in cases of doubt to avoid the question by assessing the owner.

§ 71. Every person owning or holding any real property within any school district, who shall improve and occupy the same by his agent or servant, shall, in respect to the liability of such property to taxation, be considered a taxable inhabitant of such district, in the same manner as if he actually resided therein.

It is not necessary that the agent or servant should *reside* on the land in order to render the owner a taxable inhabitant. The section was intended to prevent the necessity of resorting to a sale of the land, and to authorize the collector to levy, under his warrant, upon the personal property of an owner of land not residing in the district, but managing the land himself, or by agents or workmen, instead of renting it. If the land be occupied by tenants or subtenants, they and not the non-resident owner are to be taxed for the parts occupied by them respectively. They are for the time being owners (8 *Wend.*, 518), and, although *they*, too, should not reside on the land, are made taxable inhabitants, if they improve it. It is very plain that where land which comes within the description of the preceding section is situated partly in one district, and partly in an adjoining one, the owner, although a resident of neither, is a *taxable inhabitant of both*, in respect to the liability of the several parcels to taxation in the district in which each is actually contained. Each district must tax such owner only for the part actually within its boundaries. It is difficult to see why it should be otherwise, if he happens to be a resident of either district, inasmuch as section 66 of this title makes his liability to taxation depend not upon residence, but upon his being a "taxable inhabitant" within the definition of the statute.

§ 72. Where any district tax, for the purpose of purchasing a site for a school-house, or for purchasing or building, keeping in repair, or furnishing such school-house with necessary fuel and appendages, shall be lawfully assessed, and paid by any person on account of any real property whereof he is only tenant at will, or for three years, or for a less period of time, such tenant may charge the owner of such real estate with the amount of the tax so paid by him, unless some agreement to the contrary shall have been made by such tenant.

The tenant can charge his landlord only with such taxes as he may have paid for the specific purposes mentioned. If taxed for teachers' wages, for the hire of temporary school-house or rooms, for the purchase of maps, globes, school apparatus, books for library, for district minutes, and for teacher's register of attendance, or any other object than those enumerated in the preceding section, he cannot set it off against his rent or make the landlord repay him.

§ 73. Every taxable inhabitant of a district who shall have been, within four years, set off from any other district without his consent, and shall, within that period, have actually paid in such other district, under a lawful assessment therein, a district tax for building a school-house, shall be exempted by the trustees of the district where he shall reside from the payment of any tax for building a school-house therein.

This exemption relates only to a tax for building a school-house, and does not extend to one for repairs, fuel or any other current expense. A *voluntary* contribution for building a house in another district is not ground for an exemption, nor is the fact that a person has been taxed, if he has not actually paid the tax by the sale of his property or otherwise; nor is he exempt if he has been set off upon his own petition or consent.

§ 74. When any real estate within a district, so liable to taxation, shall not be occupied and improved by the owner, his servant or agent, and shall not be possessed by any tenant, the trustees of any district, at the time of making out any tax list by which any tax shall be imposed thereon, shall make and insert in such tax list a statement and description of every such lot, piece or parcel of land so owned by non-residents therein, in the same manner as required by law from town assessors in making out the assessment roll of their towns; and if any such lot is known to belong to an incorporated company liable to taxation in such district, the name of such company shall be specified, and the value of such lot or piece of land shall be set down opposite to such description, which value shall be the same that was affixed to such lot or piece of land in the last assessment roll of the town; and if the same was not separately valued in such roll, then it shall be valued in proportion to the valuation which was affixed in the said assessment roll to the whole tract of which such lot or piece shall be part.

The directions of the statute for the description of non-resident lands have been given at page 175. The preceding section requires, in addition, that the name of each incorporated company known to be the owner of unoccupied land shall be specified. The non-resident lands are to be described in a part of the tax list separate from the other assessments, and the greatest care is requisite to secure a minute compliance with the demands of the law. The description must be such that the State Comptroller can perceive that it will enable a purchaser at the tax sale to locate the land with certainty, and also enable the non-resident owner to know, from such description alone, that it is *his* land which has been sold, so that he may redeem it.

It is only real estate *within the district* that is to be described as non-resident property; and if it be part of a tract extending into other districts, the description in the town assessment roll may not show how much is in one district and how much in another. The trustees must supply this defect, in making out their tax list, by giving an accurate description of the boundary line of their district which intersects any unoccupied lot or subdivision of a tract. The description of each parcel separately taxed must be such that if that description, copied literally from the tax list, were inserted in a deed by the Comptroller, without adding any other words, it would suffice to identify the lot and determine its boundaries.

§ 75. If any tax on the real estate of a non-resident, mentioned in the tax list delivered to the collector, or the taxes upon rents reserved in any leases in fee, or for one or more lives, or for a term of years exceeding twenty-one years, or the taxes upon non-resident stockholders in banking associations organized under the laws of Congress, shall be unpaid at the time he is required by law to return his warrant, he shall deliver to the trustees of such district an account of the taxes so remaining due, containing a description of the lots and pieces of land upon which such taxes were imposed, as the same were stated in his tax list, together with the amount of the tax assessed on each, and, upon making oath before any justice of the peace, or judge of any court of record, that the taxes mentioned in any such account remain unpaid, and that after diligent efforts he has been unable to collect the same, he shall be credited by said trustees with the amount thereof.

The description in the collector's return must be the same as that in the tax list. The account should be in substantially the following form :

Account of unpaid taxes assessed upon the lands of non-residents in School District No. , in the town of , county of , in a tax list made out by the trustees of said district, for and delivered to the collector on the day of , 18 .

NAMES OF TAXABLE INHABITANTS AND CORPORATIONS.	Quantity of land taxed.	Value of such land.	Value of taxable personal property.	Total amount of taxes.
James Thomas, .....	80 acres.	\$400	.....	\$6 81
James Thomas, executor of estate of John Thomas, deceased, .....	.....	.....	\$1,025	17 45
Clark Cotton Manufacturing Company, .....	5 acres.	1,250	25,000	446 91
John Davison, ... ..	$\frac{1}{4}$ acres.	625	.....	10 64

Town of      COUNTY, } ss.

John Doe, being duly sworn, deposes and says, that he is collector of taxes in and for school district No.      , of the town of      , aforesaid; that the foregoing is a true account of the taxes remaining due upon the real estate of non-residents in said district; that the taxes mentioned in such account remain unpaid, and that after diligent efforts he has been unable to collect the same.

JOHN DOE.

Sworn and subscribed before me, }  
this      day of      , 18      . }

E. F., *Justice of the Peace.*

§ 76. Upon receiving any such account from the collector, the trustees shall compare it with the original tax list, and, if they find it to be a true transcript, they shall and to such account their certificate, to the effect that they have compared it with the original tax list and found it to be correct, and shall immediately transmit the account, affidavit, and certificate, to the treasurer of the county.

The certificate of the trustees should be attached to the affidavit of the collector, upon the original account. It may be as follows:

"The undersigned, trustees of school district No.      , in the town of      , county of      , hereby certify that the preceding is an account of unpaid taxes assessed on the real estate of non-residents in said district, delivered to the trustees thereof by John Doe, collector of taxes therein, and that we have examined and compared the same with the original tax list for      and found it to be correct. Dated this      day of      , 18      ."

This should be signed by a majority, at least, of the trustees. The purpose for which the tax list was made out ought to be stated, so that it may appear to have been for objects for which taxes may be legally imposed by a district meeting or by the trustees.

§ 77. Out of any moneys in the county treasury, raised for contingent expenses, the treasurer shall pay to the trustees the amount of the taxes so returned as unpaid.

It is imperative upon the county treasurer to pay at once the amount of taxes of non-residents returned unpaid, if there be any money raised for contingent expenses in the treasury and the certificate of the trustees is regular upon its face. If there be no such money in the county treasury, it is still his duty to lay the account before the board of supervisors, as prescribed in the next section, that they may raise it. The remedy of the trustees, in case of a refusal of the county treasurer to pay, is by application to the supreme court for a writ of mandamus.

§ 78. Such account, affidavit and certificate shall be laid by the county treasurer before the board of supervisors of the county, who shall cause the amount of such unpaid taxes, with seven per cent of the amount in addition thereto, to be levied upon the lands of non-residents on which the same were imposed; and if imposed upon the lands of any incorporated company, then upon such company; and if imposed upon rents reserved, in any leases in fee, or for one or more lives, or for a term of years exceeding twenty-one years, then upon such reserved rents, in the same manner that the contingent charges of the county are directed to be levied and collected; and when collected the same shall be returned to the county treasurer to reimburse the amount so advanced, with the expense of collection; and if imposed upon the stock of a non-resident stockholder in a banking association organized under the laws of Congress, then the same, with seven per cent of the amount in addition thereto, shall be a lien upon any dividends thereafter declared upon such stock, and upon notice by the board of supervisors to the president and directors of such bank of such charge upon such stock, the president and directors shall thereafter withhold the amount so stated from any future dividends upon such stock, and shall pay the same to the collector of the town duly authorized to receive the same.

This section seems to contemplate that the supervisors shall impose any tax returned, with the addition of seven per cent, upon the very same lands, rents reserved, and leases on which they were charged by the trustees, and therefore not to contemplate any correction of the description by them. This is a reason for great care on the part of the trustees in preparing the original description in the tax list.

§ 79. Any person whose lands are included in any such account may pay the tax assessed thereon to the county treasurer, at any time before the board of supervisors shall have directed the same to be levied.

§ 80. The same proceedings in all respects shall be had for the collection of the amount so directed to be raised by the board of supervisors as are provided by law in relation to county taxes; and, upon a similar account, as in the case of county taxes of the arrears thereof uncollected, being transmitted by the county treasurer to the Comptroller, the same shall be paid on his warrant to the treasurer of the county advancing the same; and the



amount so assumed by the State shall be collected for its benefit, in the manner prescribed by law in respect to the arrears of county taxes upon land of non-residents ; or if any part of the amount so assumed consisted of a tax upon any incorporated company, the same proceedings may also be had for the collection thereof as provided by law in respect to the county taxes assessed upon such company.

§ 81. The warrant for the collection of a district tax shall be under the hands of the trustees, or a majority of them, with or without their seals ; and it shall have the like force and effect as a warrant issued by a board of supervisors to a collector of taxes in the town ; and the collector to whom it may be delivered for collection shall be thereby authorized and required to collect, from every person in such tax list named, the sum set opposite to his name, or the amount due from any person or persons specified therein, in the same manner that collectors are authorized to collect town and county charges.

The trustees ought to take a written receipt from the collector for the tax list and warrants, specifying the return day and the amount to be collected, that they may be prepared with the proper evidence, in case it should be necessary to bring an action against him.

The *representatives of a deceased person* are not entitled to any delay in the payment of a tax, but are bound to pay on demand ; and on refusal or neglect, the collector may proceed to sell any property found on the premises. By section 27, subdivision 2, 2 Revised Statutes, 28, taxes of all kinds have preference to any other demand.

No property is exempt from levy and sale under a tax list and warrant, except the military equipments specified on page 102.

The collector may levy upon any goods and chattels lawfully in the possession of the person liable to pay the tax, that is to say, the person named in the tax list, although such person be *not the owner* of such goods and chattels. (13 *Wend.*, 629.) The individual property of an executor, administrator or trustee may be taken for a tax imposed on him in his representative character, when no property of the testator, intestate or *cestui que trust* can be found. (4 *Wend.*, 223.) But the warrant does not protect the collector, if he levies upon property in the possession of persons not named in the roll, or whose names, it is apparent from the roll itself, the assessors ought not to have set down ; for example, persons whose lands are described in the part of the tax list containing the list of lands taxed as non-resident. (16 *Barb.*, 651.)

The manner in which town collectors are authorized to collect town and county charges is pointed out by the following sections of title 3, chapter 13, part 1st of the Revised Statutes :

"§ 1. Every collector, upon receiving the tax list and warrant, shall proceed to collect the taxes therein mentioned, and for that purpose shall call at least once on the person taxed, or at the place of his usual residence, if in the town or ward for which said collector has been chosen, and shall demand payment of the taxes charged to him on his property.

"§ 2. In case any person shall refuse or neglect to pay the tax imposed on him, the collector shall levy the same by distress and sale of the goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wheresoever the same may be found within the district of the collector; and no claim of property to be made thereto by any other person shall be available to prevent a sale.

"§ 3. The collector shall give public notice of the time and place of sale, and of the property to be sold, at least six days previous to the sale, by advertisements to be posted up in at least three public places in the town where such sale shall be made. The sale shall be by public auction.

"4. If the property distrained shall be sold for more than the amount of the tax, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner; but if such claim be contested by the person for whose tax the property was distrained, the surplus money shall be paid over by the collector to the supervisor of the town, who shall retain the same until the rights of the parties shall be determined by due course of law."

It is provided by the Revised Statutes (*volume 2, 1st edition, page 522*) that "no replevin shall lie for any property, taken by virtue of any warrant for the collection of any tax, assessment or fine, in pursuance of any statute of this State."

A collector, like other ministerial officers bound to *execute* process, is protected, if the process is regular on its face, and comes from a court or body having jurisdiction of the subject-matter, if nothing appears in such process to apprise him that there was a defect of jurisdiction as to the particular person or property to be affected by such process. That warrant and tax list constitute a process in the nature of an execution, and must be construed together (3 *Seld.*, 517), so that if a defect of jurisdiction appear on either, the collector is not protected. But he is not bound to inquire whether the trustees have not erred in the exercise of their jurisdiction. Thus he was held to be protected, in 7 *Wend.*, 91, where the trustees had taken the valuations from the assessment roll, which was incomplete and subsequently varied, though the *trustees* were held liable as trespassers. But the collector was held liable, in 16 *Wend.*, 607, where the warrant was irregular on its face, in commanding him to proceed, "as on execution issued by justices of the peace," and in 18 *Barb.*, 327, where it commanded him to collect five per cent on all sums mentioned in the tax list, without excepting those which should be voluntarily paid him in two weeks.

The rule for the protection of ministerial officers acting under process, regular and legal on its face, is held to prevail, even though he has *knowledge* of facts rendering it void for want of jurisdiction. (5 *Hill*, 440.) "He must be governed and is protected," say the court, "by the process, and cannot be affected by any thing which he has heard or learned out of it."

§ 82. A warrant for the collection of a tax voted by the district shall not be delivered to the collector until the thirty-first day after the tax was voted. A warrant for the collection of any tax not so voted may be delivered to the collector whenever the same is completed.

The collector is not bound to give notice of the time when the tax list and warrant are put in his possession.

A distinction is here made between a tax voted by the district and one levied by authority of law without such vote.

A tax list made out for the collection of any money to defray the expenses incurred by the trustees, under sections fifty and fifty-one of this title, may have the warrant attached and be delivered to the collector "whenever the same is completed," which means just as soon as the trustees can make the assessment. No tax list can be considered as complete until it has passed from the hands of the trustees; and is no longer open to their alteration and revision. The writing out of the tax list and warrant is purely clerical. The completion of the tax list must be found in the last official act of the trustees, its delivery to the collector.

A tax list for the collection of a tax voted by the district cannot be completed until the thirty-first day after the tax was voted; but a tax list for the collection of a tax not so voted may be completed whenever the trustees deliver it to the collector.

§ 83. Within such time, not less than ten days, as the trustees shall allow him for the purpose, the collector, before receiving the first warrant for the collection of money, shall execute a bond to the trustees, with one or more sureties, to be approved by one or more of the trustees, in such amount as the district meeting shall have fixed; or, if such meeting shall not have fixed the amount, then in such amount as the trustees shall deem reasonable, conditioned for the due and faithful execution of the duties of his office.

The amount of bail to be given by the collector should be fixed at the annual meeting, when the officers of the district are chosen. It may be fixed at any duly assembled meeting:

The trustees should notify the collector of the time when a tax list and warrant will be in readiness for delivery to him, and the statute gives him ten days to look up his sureties. This notice should be served not more than twenty days after a tax is voted, in order that no time may be lost in the collection.

The following is a form of a collector's bond:

Know all men by these presents, that we, A. B., C. D. and R. S. (the collector and his sureties), are held and firmly bound to E. F., G. H. and L. M., trustees

of school district No. , in the town of , county of , in the sum of (here insert the amount of bail fixed by the district meeting or by the trustees), to be paid to the said E. F., G. H. and L. M., trustees as aforesaid, or to the survivor or survivors of them, or their successors; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this day of , 18 .

Whereas, the above bounden A. B. has been chosen (or appointed) collector of the above mentioned school district No. , in the town of , in conformity to the statutes relating to common schools; now, therefore, the condition of this obligation is such, that if the said A. B. shall well and truly collect and properly account for all moneys received by him as such collector, and shall, in all respects, duly and faithfully execute all the duties of his office as collector of such district, then this obligation shall be void, otherwise to be in full force and effect.

A. B. [L. S.]

C. D. [L. S.]

R. S. [L. S.]

Signed, sealed and delivered }  
in the presence of }

United States internal revenue stamps, to the value of one dollar, must be properly affixed to the collector's bond, and be canceled by the persons signing the same.

§ 84. The collector, for two weeks after receiving a warrant for the collection of taxes, shall receive such taxes as may be voluntarily paid to him; and in case the whole amount shall not be so paid in, the collector shall proceed forthwith to collect the same. He shall receive for his services, on all sums paid in as aforesaid, one per cent, and upon all sums collected by him after the expiration of the time mentioned, five per cent; and in case a levy and sale shall be necessarily made by such collector, he shall be entitled to traveling fees at the rate of ten cents per mile, to be computed from the school-house in such district.

The trustees are not authorized to receive or hold any money collected on a district tax. Payment to them would not be payment of the tax, and the collector cannot so regard it. He must collect and hold the moneys, and pay them out only on the written order of the trustees.

The collector must hold his tax list and warrant for two weeks to receive voluntary payments; but he cannot demand payment within that time, nor proceed to levy upon property.

After two weeks he must collect, and may demand five per cent on the sums collected. But he is not entitled to any percentage on sums remaining uncollected.

§ 85. Any collector to whom any tax list and warrant may be delivered for collection may execute the same in any other district or town in the same county, or in any other county where the district is a joint district and composed of territory from adjoining counties, in the same manner and with the like authority as in the district in which the trustees issuing the said warrant may reside, and for the benefit of which said tax is intended to be collected; and the bail or sureties of any collector, given for the faithful performance of his official duties, are hereby declared and made liable for any moneys received or collected on any such tax list and warrant.

When a collector levies upon property *out of his* district, he should put up notices of the sale of such property, as well in the district where the sale is to take place, as in that of his residence.

§ 86. If the sum or sums of money, payable by any person named in such tax list, shall not be paid by him or collected by such warrant within the time therein limited, it shall and may be lawful for the trustees to renew such warrant in respect to such delinquent person; or, in case such person shall not reside within their district at the time of making out a tax list, or shall not reside therein at the expiration of such warrant, and no goods or chattels can be found therein whereon to levy the tax, the trustees may sue for and recover the same in their name of office.

Chief Justice Nelson, delivering the opinion of the supreme court, in 24 *Wend.*, 269, where a warrant had been made out but not delivered to the collector, and the return day having passed, while it remained in the hands of the trustees, it was renewed and then delivered to the collector, says: "The renewal is in fact but a re-issuing of the process, and I can perceive no reason against regarding it as an original issuing. Nor can the difference be material whether it lies in the hands of the trustees for a time and is then revived by a renewal, or in the hands of the collector unexecuted, which confessedly would justify it." In 3 *Hill*, 495, where the objection was that the original warrant was not under seal (which, as the law then stood, rendered it *void*), but the renewal was signed by the trustees with their seals affixed, the court say: "The renewal of the warrant made it new process for all the purposes of collecting the taxes then unpaid; it is the same thing, substantially, as though the original warrant had been recited in the renewal; and thus we have a warrant under the hands and seals of the trustees." In 4 *Barb.*, 444, it was held that the issuing of a *new warrant* was a good execution of the power to renew. In 17 *Barb.*, 145, a warrant not issued until after its renewal

becomes, by delivery to the collector with a renewal indorsed, valid and effectual process, *as of that date*; and the rights of tax payers and duties of the collector are the same as they would have been had the warrant been made out and dated as an original process on the day of its delivery to the collector. In 20 Barb., 165, where three trustees signed the original warrant, but one of them refused to sign the renewal, the latter was held not liable for any act done under the renewal and after the original return day.

The renewal is to be under the hands of the trustees, or a majority of them, who are in office at the time of such renewal. For the purpose of preserving an authentic history of the process, it is better to append a renewal to the original warrant than to issue a new one, except in cases where the original may be discovered to have been defective in its form. It ought to specify the duration of the time for which it is renewed, and to be indorsed upon or written under the original warrant, in substantially the following form:

We hereby renew the within (or above written) warrant in respect to delinquents for the period of thirty days. Dated this            day of            , 18 .

A. B.,	}	<i>Trustees of District</i>
C. D.,		
E. F.,		

No.	}	<i>, in the</i>

town of	
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A second or subsequent renewal requires the consent of the supervisor, under the next section. In that case, the words "With the approbation of the supervisor of the town of            (in which the school-house is located)," should precede the above form.

Where the warrant is renewed by the trustees, the collector in office at the time of such renewal must execute it.

It being a palpable absurdity to talk of those as delinquents who have never been called upon to pay, this language of the statute is an admonition to the trustees not to suffer a warrant to run out in their hands without issuing it.

The latter clause of the above section, giving the trustees the right to sue persons named in a tax list, is confined to such as did not *reside* within the district at the time of making out the list, or who shall have ceased to reside therein at the expiration of the warrant. It cannot be regarded as having expired until a renewal may have run out; and in respect to both classes of persons, the inability to find goods and chattels whereon to levy the tax should be proved by the sworn return of the collector before a suit is brought. They may have been taxable inhabitants, under some of the definitions of those words contained in the statutes regarding taxation, without ever having been residents or having, in fact, set foot in the district at all.

§ 87. Whenever the trustees of any school district shall discover any error in a tax list made out by them, they may, with the approbation and consent of the Superintendent of Public Instruction, after refunding any amount that may have been improperly collected on such tax list, if the same shall be required by him,

amend and correct such tax list, as directed by the Superintendent, in conformity to law ; and whenever more than one renewal of a warrant for the collection of any tax list may become necessary in any district, the trustees may make such further renewal, with the written approbation of the supervisor of any town in which a school-house of said district shall be located, to be indorsed upon such warrant.

The application to the State Superintendent, for his consent to correct an error, should be under the hands of a majority of the trustees, and should state specifically wherein the error is supposed to consist, and in what manner they propose to amend and correct the tax list. It will ordinarily be the better mode to revoke the imperfect tax list and to make out a new one, stating in the heading thereof that it is "Amended and corrected with the approbation and consent of the State Superintendent of Public Instruction, by his order bearing date the      day of      , 18 ." The order should, of course, be carefully filed as evidence of the authority to collect under it.

The approval of the supervisor may be given by his indorsing on the warrant, under the form given in the preceding section, the words :

"Approved this      day of      , 18 . H. T., *Supervisor of*      ."

If there be more than one school-house in the district, and they be located in different towns, the approval should, as a matter of prudence, be signed by the supervisors of all such towns. It is a matter of discretion with the supervisor, in the first instance, to grant or withhold his approbation. If he improperly refuses it, the remedy is by appeal upon regular notice to him.

§ 88. The collector shall keep in his possession all moneys received or collected by him by virtue of any warrant, to be by him paid out upon the order of a majority of the trustees ; and he shall report in writing at the annual meeting, all his collections and disbursements, and shall pay over to his successor in office, when he has duly qualified and given bail, all moneys in his hands belonging to the district.

The collector by this section is made the legal custodian of all moneys collected by tax upon the district ; and he can pay it out only upon the order of a majority of the trustees. The collector should demand a written order. The collector and his sureties in his bond are responsible for the safe keeping and legal disbursement of the moneys of the district. The orders of the trustees are the only proper vouchers for the disposal of the moneys.

The collector should keep an account of all moneys collected and paid out by him, and be ready with his vouchers, to report at the annual meeting.

Before handing over the moneys in his hands to his successor, he should be certain that the bail required has been given ; and should take a receipt for the moneys paid over.

§ 89. If, by the neglect of any collector, any moneys shall be lost to any school district, which might have been collected within the time limited in the warrant delivered to him for their collection, he shall forfeit to such district the amount of the moneys thus lost, and shall account for and pay over the same to the trustees of such district, in the same manner as if they had been collected.

The collector's power to sell property ceases with the expiration of the time limited in the warrant for its return, even under a levy made before the return day; and unless the warrant is renewed by the trustees, his liability for not collecting becomes fixed. (18 *Barb.*, 330.) It behooves him, therefore, not to intermit his efforts to collect a tax upon any verbal directions of the trustees. Having commanded him by a warrant, he is bound to complete its execution, unless the time is extended by the equally solemn act of renewal. Nor is he bound to delay, against his own wishes, because the trustees desire it. They may sometimes desire to suspend proceedings, where he is indifferent, because a warrant, regular on its face, is sufficient for *his* protection, while they may be responsible from a defect of authority not apparent on its face. In such a case he should require a formal certificate from the trustees that they have withdrawn the warrant, and discharged him from the further execution thereof, and should make a return thereon to this effect:

"Under the within warrant, I have received and collected of the following persons named in the tax list thereto attached the sum of money set opposite to their respective names, viz.: James Thomas, \$6.81; James Thomas, executor of John Thomas, deceased, \$17.45, etc., etc., and have this day ceased from the further execution thereof, by the written direction of C. D. and E. F., a majority of the trustees.

"Dated this            day of            , 18    .

"STEPHEN GRINNER, *Collector.*"

Transactions of this nature should never be left to rest upon loose conversations, nor should any officer of a district permit his responsibility to the inhabitants to be confounded with that of other officers, who may have distinct accounts to render for their conduct in the affair.

Where a warrant runs out in the collector's hands, he is answerable for any loss arising from his neglect, notwithstanding such warrant may have been afterward renewed and delivered to his successor.

§ 90. For the recovery of all such forfeitures, and of all balances in the hands of the collector which he shall have neglected or refused to pay to his successor, the trustees, in their name of office, shall have their remedy upon the official bond of the collector, or any action and any remedy given by law; and they shall apply all such moneys, when recovered, in the same manner as if paid without suit.



The forfeiture referred to in this section is the amount of money which a collector *might* have collected by the exercise of proper diligence. The legal presumption is, when the return day of a warrant arrives, that the collector has all the money in his hands. It is sufficient for the trustees to prove that they delivered to him a tax list and warrant for the collection of a certain amount, and that the time therein specified for its return has expired. They may then rest their case, and it lies upon the collector to produce in his defense the orders of the trustees for such moneys as he may have paid, his account of non-resident taxes, with his affidavit of his inability, after diligent efforts, to collect the same, and then to show as to *taxable inhabitants named* in the tax list, that they had no personal property within the district upon which he could levy. The trustees may then prove in reply that such taxable inhabitants had personal property outside of the district but within the county (or, if the district includes parts of more than one county, in either county), and they ought probably to show, in addition, that the collector had express notice of the fact, or that he knew it, or that it was so far known in the district that the collector, by reasonable diligence in making inquiries, would have ascertained such facts as to make it his duty to look for property outside of the district. The question is, would an ordinary man—not a particularly keen or covetous man—armed with the power to appropriate any chattels of his debtor to the payment of a debt due himself, have failed to discover that such property was within his reach?

## TITLE VIII.

### OF SCHOOL DISTRICT LIBRARIES, AND THE APPLICATION OF LIBRARY MONEYS.

SECTION 1. The taxable inhabitants of each school district in the State shall have power, when lawfully assembled in any district meeting, to lay a tax on the district, not exceeding ten dollars in any one year, for the purchase of such books as they shall direct for the district library, and such further sum as they may deem necessary for the purchase of a book-case. All books and cases which may have been or shall be purchased with moneys raised by such taxes, or with moneys apportioned to the district for library purposes, and all books which have been given to and accepted by the trustees for the library, shall compose the library of the district.

The power of taxation granted in this section is a duplication of the power given by subdivision 9 of section 16 of title 7 of this act.

Section 135 of the act of 1847, following chapter 80 of 1835, from which it was taken, directs that "the taxes authorized by the foregoing section shall be assessed and collected in the same manner as a tax for building a school-house."

The books to be purchased by tax under this section are such as the district meeting shall direct, while those purchased by the library money *apportioned* to the district are selected by the trustees. The meeting may adopt such regulations as it deems proper for the management of so much of the library as is purchased by a district tax, while the general regulations in respect to those bought by money received from the State are prescribed by the State Superintendent.

§ 2. The sum of fifty-five thousand dollars, directed to be distributed to the several school districts of this State by the fourth section of chapter two hundred and thirty-seven of the Laws of eighteen hundred and thirty-eight, shall continue to be applied to the purchase of books for the district libraries.

The selection of books for the district library is devolved by law upon the trustees; and when the importance of this most beneficent and enlightened provision for the intellectual and moral improvement of the inhabitants of the several districts, of both sexes and all conditions, is duly estimated, the trust here confided is one of no ordinary responsibility. In reference to such selections, but two prominent sources of embarrassment have been experienced. The one has arisen from the necessity of excluding from the libraries all works having directly or remotely a sectarian tendency, and the other from that of recommending the exclusion of novels, romances and other fictitious creations of the imagination, including a large proportion of the lighter literature of the day. The propriety of a peremptory and uncompromising exclusion of those catchpenny but revolting publications which cultivate the taste for the marvelous, the tragic, the horrible and the supernatural—the lives and exploits of pirates, banditti and desperadoes of every description—is too obvious to every reflecting mind to require the slightest argument.

If any case of improper selection of books should come before the Superintendent, by appeal from any inhabitant, such selection would be set aside; and if it appears from the reports which, according to regulation, must be made, that such books have been purchased, the school commissioner will be bound to withhold the next year's library money from such district until they are replaced by works of equal cost and better character.

In regard to works of a sectarian character, which there is considerable disposition to smuggle into district libraries, the following general rules, promulgated by Superintendent Randall several years ago, may be regarded as expressing the settled principles of the department:

"1. No works written professedly to uphold or attack any sect or creed in our country, claiming to be a religious one, shall be tolerated in the school libraries;

"2. Standard works on other topics shall not be excluded because they incidentally and indirectly betray the religious opinions of their authors;

"3. Works avowedly on other topics, which abound in direct and unreserved attacks on, or defense of, the character of any religious sect, or those which

hold up any religious body to contempt or execration, by singling out or bringing together only the darker parts of its history or character, shall be excluded from the school libraries."

In the selection of books for a district library, information, and not mere amusement, is to be regarded as the primary object. Suitable provision should, however, be made for the intellectual wants of the young, by furnishing them with books which, without being merely juvenile in their character, may be level to their comprehension, and sufficiently entertaining to excite and gratify a taste for reading. It is useless to buy books which are not read. The indifference which is manifested in respect to many of the district libraries shows that in point of fact their volumes are little sought for. This could hardly be the case, if the annual additions were of a kind to interest the young. If we can succeed in making eager readers of the youthful generation, they will take care of the libraries in the future.

§ 3. But whenever the number of volumes in the district library of any district numbering over fifty children between the ages of five and sixteen shall exceed one hundred and twenty-five, or of any district numbering fifty children or less between the said ages shall exceed one hundred volumes, the inhabitants of the district qualified to vote therein may, at a special or annual meeting duly notified for that purpose, by a majority of votes, appropriate the whole or any part of the library money belonging to the district for the current year to the purchase of maps, globes, blackboards, or other scientific apparatus for the use of the school; and in every district having the required number of volumes in the district library, and the maps, globes, blackboards and other apparatus aforesaid, the said moneys, with the approbation of the Superintendent of Public Instruction, may be applied to the payment of qualified teachers' wages.

This section was a part of section 136 of chapter 480, Laws of 1847. The so-called free school law of 1851 required the enumeration of all children between the ages of four and twenty-one, and declared the schools free to all between those ages. But this section was not amended by that law, but has remained unaltered ever since.

In order, therefore, to authorize a district to apply its library money to the purchase of scientific apparatus, or, with the approbation of the State Superintendent, to paying teachers' wages, it must number over fifty children between the ages of *five* and *sixteen*, and actually have in its library over one hundred and twenty-five volumes, or over one hundred volumes if the number of children between those ages be less than fifty. The mere fact that the district has at some previous time possessed the requisite number of volumes is not sufficient.

On making an application to the State Superintendent, the facts must be proved by an affidavit, stating the number of children, the number of volumes actually in the library, and enumerating what maps, globes, and other scientific apparatus have been procured and are actually in use in the school.

The vote of a district and the permission of the State Superintendent relate only to the application of library money *for the current year*, and must be annually renewed to justify any diversion of it from the purchase of books.

§ 4. When the library money apportioned to a district in any year shall be less than three dollars, the trustees may apply it in payment of qualified teachers' wages.

The annual apportionment made by the school commissioners will show what is the amount of library money belonging to each district. If it is less than three dollars, then the trustees may give an order for it on the supervisor in part payment of the wages of a qualified teacher.

§ 5. The trustees of every school district shall be trustees of the library of such district; and the property of all books therein, and of the case and other appurtenances thereof, shall be deemed to be vested in such trustees, so as to enable them to maintain any action in relation to the same. It shall be their duty to preserve such books and keep them in repair; and the expenses incurred for that purpose may be included in any tax list to be made out by them as trustees of a district, and added to any tax voted by a district meeting, and shall be collected and paid over in the same manner. The librarian of any district library shall be subject to the directions of the trustees thereof, in all matters relating to the preservation of the books and appurtenances of the library, and may be removed from office by them for willful disobedience of such directions, or for any willful neglect of duty.

Being required to *preserve* the books belonging to the library, the trustees must have power to do all that is necessary to their preservation. If the people neglect or refuse to vote a tax to buy a book-case, the trustees may buy one, on the ground that a library cannot be preserved without a book-case capable of holding the books.

They are also to cause the books and case to be repaired as soon as may be, when injured; and to provide sufficient wrapping paper to cover their books, and the necessary writing paper to enable the librarian to keep minutes of the delivery and return of books. These are proper expenses for the preservation and repair of the books, and are to be defrayed by a tax on the district, which is to be added by the trustees to any tax voted by a district meeting. It is not necessary that the tax to defray these expenses should be voted by the inhab-

itants of the district ; it is to be assessed and collected in the same manner as a tax for building or repairing a school-house, or to furnish it with necessary fuel and appendages.

The trustees of each school district are required, at the time of making their annual reports, to deliver to the school commissioner a catalogue containing the titles of all the books in the district library not previously reported, with the number of volumes of each set or series, and the condition of such books, whether sound, or injured or defaced. This catalogue must be signed by them and by the librarian.

§ 6. Trustees shall be liable to their successors, and the librarian shall be liable to the trustees, for any neglect or omission of their respective duties, by which any book shall be lost, destroyed or damaged, to the amount of such damage and the value of the book so destroyed or lost.

There is great reason to fear that the duties of trustees, in respect to the preservation of the libraries in good condition, are often criminally neglected. They ought to investigate its condition as soon as they come into office, ascertain who has the custody or is responsible for every book upon its catalogue, and see that it is returned in due time to the librarian, or that the proper fine for its detention is imposed and collected. If their predecessors cannot produce or account for the books, they should be prosecuted for the value of such as may be missing.

It is believed that the loss of many books, and the injury of others, are owing to neglect of the trustees to provide a book-case for them. Books that are tumbled promiscuously into an old trunk, or dry goods box, and stowed away in a garret, are not kept and preserved. A book-case well filled with good books is the most valuable ornament in any room. The librarian of any district which has a library of two or three hundred well selected books ought to consider himself the most favored man in his neighborhood.

§ 7. All moneys recovered under the last preceding section, and all moneys received upon any policy of insurance procured upon the library, and all fines and penalties imposed by or in pursuance of this title, shall be applied, by the trustees, in the purchase of books for and in the reparation and care of the library.

§ 8. Any two or more adjoining districts, with the consent of all the commissioners of the school commissioner districts within which they lie, may, by a majority of votes in their several districts, unite their libraries, and apply their library moneys and funds to the care, reparation and augmentation of their joint library so formed. All the trustees of such districts shall be trustees of such library, with all the powers, duties and liabilities conferred and

imposed by this title upon the trustees of a library of a district, and the librarian shall be appointed by them, and have the powers and be subject to the duties and liabilities conferred and imposed by this title upon the librarian of a district; but upon the question of his appointment or removal, and upon any other question which may arise in the board of trustees, the trustee or trustees of each district shall have one vote only. All the districts owning such library shall be considered as a school district, and the library as a school district library, within the meaning of the subsequent provisions of this title.

§ 9. The agreement forming a joint library may be terminated by the votes of all the several districts that made it, or by the votes of any one or more of them less than the whole, provided a majority of the school commissioners, within whose districts the school districts lie, advise and consent thereto, or the Superintendent of Public Instruction so order.

§ 10. When such an agreement shall be dissolved, the trustees of the several districts (the trustee or trustees of each district having only one vote) shall divide the library and all the joint funds on hand, including all fines and penalties incurred, among the several districts; and if they cannot agree, then such division shall be made by the commissioners within whose districts the school districts lie, or by some officer or person selected by the Superintendent of Public Instruction.

It has been frequently and earnestly urged upon the department and the Legislature to favor the consolidation of all the district into town libraries. The principal objection to the formation of town libraries is that the distance to be traveled to and from them would render them practically useless to a large part of the inhabitants of any town. There is no other serious objection. The money would be more economically expended, the purchase would comprise a greater variety of books, they would be in the main a better class of books, and they would be more carefully preserved.

There can be no doubt of the propriety and usefulness of uniting all the libraries of such districts as are partly composed of villages.

§ 11. The general regulations respecting the preservation of school district libraries, the delivery of them by librarians and trustees to their successors in office, the use of them by the inhabitants of the district, the number of volumes to be taken by any

one person at any one time or during any term, the periods of their return, the fines and penalties that may be imposed by the trustees of such libraries for not returning, for losing or destroying, any of the books therein, or for soiling, defacing or injuring them, heretofore framed by the Superintendent of Public Instruction, are continued in force, and he may, from time to time, amend, annul or add to them, and shall, from time to time, furnish printed copies of the regulations in force, and of such amendments, annulments and additions to the trustees of such libraries; and all such regulations shall be obligatory upon all persons and officers having charge of such libraries, or using or possessing any of the books thereof. Such fines may be recovered in an action of debt, in the name of the trustees of any such library, of the person on whom they are imposed, unless such person be a minor; in which case they may be recovered of the parent or guardian of such minor, unless notice in writing shall have been given by such parent or guardian to the trustees of such library, that they will not be responsible for any books delivered to such minor. And persons with whom such minors reside shall be liable, in the same manner and to the same extent, in cases where the parent of such minor does not reside in the district.

REGULATIONS OF THE SUPERINTENDENT MADE IN PURSUANCE OF THE ABOVE  
PROVISION.

1. The librarian is required, whenever any library is purchased and taken charge of by him, to make out a full and complete catalogue of all the books contained therein. At the foot of each catalogue he is to sign a receipt in the following form:

I, A. B., do hereby acknowledge that the books specified in the preceding catalogue have been delivered to me by the trustees of school district No. , in the town of , to be safely kept by me, as librarian of the said district, for the use of the inhabitants thereof, according to the regulations prescribed by the Superintendent of Public Instruction, and to be accounted for by me, according to the said regulations, to the trustees of the said district, and to be delivered to my successor in office. Dated, etc.

A correct copy of the catalogue and receipt is then to be made, to which the trustees are to add a certificate in the following form:

We, the subscribers, trustees of school district No. , in the town of , do certify that the preceding is a full and complete catalogue

of books in the library of the said district, now in possession of A. B., the librarian thereof, and of his receipt thereon. Given under our hands, this day of           , 18   .

The catalogue having the librarian's receipt is to be delivered to the trustees, and a copy having the certificate of the trustees is to be delivered to the librarian for his indemnity.

2. Whenever books are added to the library, a catalogue, with a similar receipt by the librarian, is to be delivered to the trustees, and a copy, with a certificate of the trustees that it is a copy of the catalogue delivered them by the librarian, is to be furnished to him. Every catalogue received by trustees is to be kept by them carefully among the papers of the district, and to be delivered to their successors in office.

3. Whenever a new librarian shall be chosen, all the books are to be called in. For this purpose the librarian is to refuse to deliver out any books for fourteen days preceding the time so prescribed for collecting them together. At these periods, they must make a careful examination of the books, compare them with the catalogue, and make written statements, in a column opposite the name of each book, of its actual condition, whether lost or present, and whether in good order or injured, and, if injured, specifying in general terms the extent of such injury. This catalogue, with the remarks, is to be delivered to the successors of the trustees, to be kept by them; a copy of it is to be made out and delivered to the new librarian, with the library, by whom a receipt, in the form above prescribed, is to be given, and to be delivered to the trustees. Another copy, certified by them as before mentioned, is to be delivered to the librarian.

4. Trustees, on coming into office, are to attend at the library for the purpose of comparing the catalogue with the books. They are at all times, when they think proper, and especially on their coming into office, to examine the books carefully, and note such as are missing or injured. For every book that is missing, the librarian is accountable to the trustees for the full value thereof, and for the whole series of which it formed a part; such value to be determined by the trustees. He is accountable, also, for any injury which a book may appear to have sustained by being soiled, defaced, torn or otherwise. And he can be relieved from such accountability only by the trustees, on its being satisfactorily shown to them that some inhabitant of the district has been charged or is chargeable for the books so missing, or for the amount of the injury so done to any work. It is the duty of the trustees to take prompt and efficient measures for the collection of the amount for which any librarian is accountable.

5. The librarian must cause to be pasted in each book belonging to the library a printed or written label, or must write in the first blank leaf of each book, specifying that the book belongs to the library of school district No.            in the town of           , naming the town and giving the number of the district; and he is on no account to deliver out any book which has not such printed or written declaration in it. He is also to cause all the books to be covered with



strong wrapping paper, on the back of which is to be written the title of the book, and its number in large figures. As new books are added, the numbers are to be continued, and they are in no case to be altered; so that if a book be lost, its number and title must still be continued on the catalogue, with a note that it is missing.

The librarian must keep a blank book, that may be made by stitching together half a dozen or more sheets of writing paper. Let those be ruled across the width of the paper, so as to leave five columns of the proper size for the following entries, to be written lengthwise of the paper: In the first column, the date of the delivery of any book to any inhabitant; in the second, the title of the book delivered, and its number; in the third, the name of the person to whom delivered; in the fourth, the date of its return; and in the fifth, remarks respecting its condition, in the following form:

Time of Delivery.	Title and No. Book.	To whom.	When Returned.	Condition.
1839, June 10.	History of Va. 43.	T. Jones.	20th June.	Good.

As it will be impossible for the librarian to keep any trace of the books without such minutes, his own interest to screen himself from responsibility, as well as his duty to the public, will, it is to be hoped, induce him to be exact in making his entries at the time any book is delivered, and, when it is returned, to be equally exact in noticing its condition, and making the proper minute.

A fair copy of the catalogue should be kept by the librarian, to be exhibited to those who desire to select a book; and, if there be room, it should be fastened on the door of the case.

#### REGULATIONS CONCERNING THE USE OF THE BOOKS IN DISTRICT LIBRARIES, PRESCRIBED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

I. The librarian has charge of the books, and is responsible for their preservation and delivery to his successor.

II. A copy of the catalogue required to be made out by articles one and two of the preceding regulations is to be kept, by the librarian, open to the inspection of the inhabitants of the district at all reasonable times. It will be found convenient to affix a copy of it on the door of the book-case containing the library.

III. Books are to be delivered as follows:

1. Only to inhabitants of the district;
2. Only one can be delivered to an inhabitant at a time; and any one having a book out of the library must return it before he can receive another;
3. No person upon whom a fine has been imposed by the trustees, under these regulations, can receive a book while such fine remains unpaid;

4. A person under age cannot be permitted to take out a book, unless he resides with some responsible inhabitant of the district ; nor can he then receive a book, if notice has been given by his parent or guardian, or the person with whom he resides, that they will not be responsible for books delivered such minor ;

5. Each individual residing in the district, of sufficient age to read the books belonging to the library, is to be regarded as an inhabitant, and is entitled to all the benefits and privileges conferred by the regulations relative to district libraries. Minors will draw in their own names, but on the responsibility of their parents or guardians ;

6. Where there is a sufficient number of volumes in the library to accommodate all residents of the district who wish to borrow, the librarian should permit each member of a family to take books, as often as desired, so long as the regulations are punctually and fully observed. But where there are not books enough to supply all the borrowers, the librarian should endeavor to accommodate as many as possible, by furnishing each family in proportion to the number of its readers or borrowers.

IV. Every book must be returned to the library within twenty days after it shall have been taken out ; but the same inhabitant may again take it, unless application has been made for it while it was so out of the library by any person entitled, who has not previously borrowed the same book, in which case such applicant shall have a preference in the use of it. And where there have been several such applicants, the preference shall be according to the priority in time of their applications, to be determined by the librarian. Upon application to the Superintendent, the time for keeping books out of the library will be extended to a period not exceeding twenty-eight days, where sufficient reasons for such extension are shown.

V. If a book be not returned at the proper time, the librarian is to report the fact to the trustees ; and he must also exhibit to them every book which has been returned injured, by soiling, defacing, tearing or in any other way, before such book shall again be loaned out, together with the name of the inhabitant in whose possession it was when so injured.

VI. The trustees of school districts being, by virtue of their office, trustees of the library, are hereby authorized to impose the following fines :

1. For each day's detention of a book, beyond the time allowed by these regulations, six cents ; but not to be imposed for more than ten days detention ;

2. For the destruction or loss of a book, a fine equal to the full value of the book, or of the set, if it be one of a series, with the addition to such value of ten cents for each volume. And on the payment of such fine, the party fined shall be entitled to the residue of the series. If he has also been fined for detaining such book, then the said ten cents shall not be added to the value ;

3. For any injury which a book may sustain after it shall be taken out by a borrower, and before its return, a fine may be imposed of six cents for every spot of grease or oil upon the cover, or upon any leaf of the volume ; for writing in or defacing any book, not less than ten cents, nor more than the

value of the book ; for cutting or tearing the cover or the binding, or any leaf not less than ten cents, nor more than the value of the book ;

4. If a leaf be torn out, or so defaced or mutilated that it cannot be read, or if any thing be written in the volume, or any other injury done to it which renders it unfit for general circulation, the trustees will consider it a destruction of the book, and shall impose a fine accordingly, as above provided in case of loss of a book ;

5. When a book shall have been detained seven days beyond the twenty days allowed by these regulations, the librarian shall give notice to the borrower to return the same within three days. If not returned at that time, the trustees may consider the book lost or destroyed, and may impose a fine for its destruction, in addition to the fines for its detention.

VII. But the imposition of a fine, for the loss or destruction of a book, shall not prevent the trustees from recovering such book in an action of replevin, unless such fine shall have been paid.

VIII. When, in the opinion of the librarian, any fine has been incurred by any person under these regulations, he may refuse to deliver any book to the party liable to such fine, until the decision of the trustees upon such liability be had.

IX. Previous to the imposition of any fine, two days' written or verbal notice is to be given by any trustee or the librarian, or any other person authorized by either of them, to the person charged, to show cause why he should not be fined for the alleged offense or neglect ; and if, within that time, good cause be not shown, the trustees shall impose the fine herein prescribed. No other excuse for an extraordinary injury to a book, that is, for such an injury as would not be occasioned by its ordinary use, should be received ; than the fact that the book was as much injured when it was taken out, by the person charged, as it was when he returned it. As such loss must fall on some one, it is more just that it should be borne by the party whose duty it was to take care of the volume than by the district. Negligence can only be prevented, and disputes can only be avoided, by the adoption of this rule. Subject to these general principles, the imposition of all or any of these fines is *discretionary* with the trustees, and they should ordinarily be imposed only for *willful* or *culpably negligent* injuries to books, or where the district actually sustains a loss or serious injury. Reasonable excuses for the detention of the books beyond twenty days should in all cases be received.

X. It is the special duty of the librarian to give notice to the borrower of a book that shall be returned injured, to show cause why he should not be fined. Such notice may be given to the agent of the borrower who returns the book, and it should always be given at the time the book is returned.

XI. The librarian is to inform the trustees of every notice given by him to show cause against the imposition of a fine ; and they shall assemble at the time and place appointed by him, or by any notice given by them, or any one of them, and shall hear the charge and defense. They are to keep a book of minutes, in which every fine imposed by them, and the cause, shall be entered and signed by them, or the major part of them. Such original minutes, or a

copy certified by them, or the major part of them, or by the clerk of the district, shall be conclusive evidence of the fact that a fine was imposed, as stated in such minutes, according to these regulations.

XII. It shall be the duty of trustees to prosecute promptly for the collection of all fines imposed by them. Fines collected for the detention of books, or for injuries to them, are to be applied to defray the expense of repairing the books in the library. Fines collected for the loss or destruction of any book, or of a set or series of books, shall be applied to the purchase of the same or other suitable books.

XIII. These regulations being declared by law "obligatory upon all persons and officers having charge of such libraries, or using or possessing any of the books thereof," it is expedient that they should be made known to every borrower of a book. And for that purpose, a printed copy is to be affixed conspicuously on the case containing any library, or on one of such cases if there be several, and the librarian is to call the attention to them of every person, on the first occasion of his taking out a book.

The offices of trustee and librarian are incompatible, and cannot be held by the same person.

§ 12. The Superintendent of Public Instruction, whenever he may deem proper, may require the trustees of any such library to make to him, or to the school commissioner, a report showing the contents and condition of the library, the fines imposed, and any other information which he may deem proper touching the library or its management, and shall prescribe the form, contents and authentication of such report. And may impose it as a duty upon the teacher employed in any district, under the direction of the trustees, to assist them in making such examination, and when such direction is given, the teacher may close the school one day for the purpose of making such examination, and the same shall not be accounted as lost time.

§ 13. If any such trustees willfully neglect or refuse to make any such report, the Superintendent shall cause all library moneys to be withholden from the district until the report be made and considered by him, and such moneys shall, if he see cause, be forfeited by the district, in which case they shall be apportioned among the school districts of the county in which the library is situated, other than such school district. And any trustee or trustees, through whose neglect or refusal such moneys shall be lost to the district, shall forfeit and pay to the district twice the amount of such moneys, for the benefit of the library of the dis-

trict, and such forfeiture may be recovered by his or their successors in office.

§ 14. The Superintendent, whenever thereto requested by the trustees of any district school library, may select the library or books for the library of the district, and cause the same to be delivered to the clerk of the county.

§ 15. The act entitled "An act to provide for the distribution of standard works of American authors among the libraries of district schools," passed April twelfth, eighteen hundred and fifty-six, is hereby repealed.

## TITLE IX.

### OF UNION FREE SCHOOLS.

SECTION 1. Whenever fifteen persons entitled to vote at any meeting of the inhabitants of any school district in the State shall sign a call for a meeting, to be held for the purpose of determining whether a union free school shall be established therein, in conformity with the provisions of this title, it shall be the duty of the trustees of such district, within ten days after such call shall have been presented to them, to give public notice that a meeting of the inhabitants of such district, entitled to vote thereat, will be held for such purpose as aforesaid, at the school-house, or other more suitable place, in such district, on a day and at an hour in such notice to be specified, not more than twenty days after the publication of such notice. If the trustees shall refuse to give such notice, or shall neglect to give the same for twenty days, the Superintendent of Public Instruction may authorize and direct any inhabitant of said district to give the same. The qualifications of the inhabitants entitled to vote at such meetings, as now by law expressed, shall be sufficiently set forth in the notice aforesaid.

This title is an amendment of chapter 433 of the Session Laws of 1853. Its object was to promote the consolidation of districts, and, by uniting property and numbers, to improve the schools. The Legislature, by this act, gave to the people of any district the right to have free schools, or to the people of two or more districts the right to unite and have free schools upon the conditions prescribed. The law has worked satisfactorily, and has greatly promoted the cause of free schools, by educating a public opinion in their favor.

The form of the call by the inhabitants may be as follows: "The undersigned, inhabitants of school district No.      , in the town of      , entitled to

vote at any meetings of the inhabitants of said district, hereby call for a meeting, to be held for the purpose of determining by a vote of such district whether an union free school shall be established therein, in conformity to the provisions of chapter 555 of the Laws of 1864."

This, being first signed by at least fifteen qualified voters, should be delivered to the trustees. The notice to be given by the trustees should consist, first, of a copy of the call and of the signatures thereto, after which the notice should proceed as follows :

"The undersigned, trustees of school district No. , in the town of , in compliance with a call of fifteen (or more than fifteen) persons, entitled to vote at any meeting of the inhabitants of said district, of which the above is a copy, hereby give notice that a meeting of the inhabitants of said district, entitled to vote thereat, viz., every male person of full age, residing therein, and entitled to hold lands in this State, who owns or hires real property in such district, subject to taxation for school purposes ; every resident of such district authorized to vote at town meetings of the town of (in a joint district, say either of the towns, of or ), who owns any personal property liable to be taxed for school purposes in said district exceeding fifty dollars in value, exclusive of such as is exempt from execution, or who has permanently residing with him a child or children of school age, some one or more of whom shall have attended the district school for a period of at least eight weeks in the year preceding the date at which said meeting is to be held, will be held at (the school-house or other more suitable place) on the day of next, at o'clock in the noon, for the purpose of determining by a vote of such district whether an union free school shall be established therein, in conformity to the provisions of chapter 555 of the Laws of 1864, and the amendments thereof. Dated this day of , 186 .

(Signed) A. B., } Trustees of District  
C. D., } No. in the  
E. F., } town of ."

The day to be specified in the notice must be not more than twenty days after the first posting of the notices.

§ 2. The notice aforesaid, and at least five written or printed copies thereof, shall be severally posted at various conspicuous places in, and may also be published in any newspaper circulating within, such district. The trustees of such district shall authorize and require any taxable inhabitant of the same to notify every other inhabitant (qualified to vote as aforesaid), of such meeting, to be called as aforesaid, who shall give such notification in the manner, and subject to the penalty prescribed in the case of the formation of new school districts, by title 7 of this act.

Besides posting the original notice, and five copies in so many conspicuous places in the district (which may be done by the trustees), they may require any taxable inhabitant to give such notice as is required by section 6 of title 7, under a penalty of five dollars for refusal, as provided by section 5 of the same title.

§ 3. The reasonable expense of such notices, and of their publication and service, shall be chargeable upon the district, in case a union free school is established by the meeting so convened, to be levied and collected by the trustees, as in cases of taxes now levied for school purposes; but in the event that such union free school shall not be established, then the said expense shall be chargeable upon the inhabitants signing the call, jointly and severally, to be sued for if necessary in any court having jurisdiction of the same.

§ 4. Whenever fifteen persons, entitled as aforesaid, from each of two or more adjoining districts, shall unite in a call for a meeting of the inhabitants of such districts, to determine whether such districts shall be consolidated by the establishment of a union free school therefor and therein, it shall be the duty of the trustees of such districts, or a majority of them, to give like public notice of such meeting, at some convenient place within such districts, and as central as may be, within the time, and to be published and served in the manner set forth in the second section of this title, in each of such districts. The reasonable expenses of preparing, publishing and serving such notices, shall be chargeable upon the union free school district, and be collected by tax, if a union free school shall be established pursuant to such call; but otherwise the signers of the call shall be jointly and severally liable for such expenses. The Superintendent of Public Instruction may order such meeting, under the conditions and in the manner prescribed in the first section of this title.

The form of the call under this section may be the same as that above given under section one of this title, except that it should expressly call "for the consolidation of said districts (the numbers of which will be previously stated) and for a meeting," etc. It must be signed by at least thirty, or, if it is proposed to consolidate three districts, by forty-five persons, fifteen of whom must be qualified voters in *each* of the districts. Where there are less than fifteen voters in any one of these districts, the requirements of the law will be satisfied if *all* the voters of such district sign the call. The trustees of *each* district should appoint

a taxable inhabitant to give personal notice therein; and an original and five copies of the call and notice should be posted in each of the districts, signed by a majority of the board composed of the trustees of all the districts to which the notice relates. The place of meeting may be in either district. It is important that the original call and notices should be preserved, to be filed with the certified copy of the minutes in the town clerk's office. If the proposed consolidated district includes parts of more than one county, the call and notices should be signed in duplicate.

It is important that it should appear from the proceedings of the meeting that at least one-third of the inhabitants of *each* district concerned are present. For this purpose, as soon as the meeting is organized by the election of a chairman and secretary, the clerk of each district, or the inhabitant required to give notice therein, should make a return, specifying the names of the voters in his district, which should be read by the secretary, and the names of those present from each district entered upon his minutes.

The numbers and constitution of the meeting being thus ascertained, and found to be sufficient to give jurisdiction of the subject, the question should be brought before it by a resolution that "a union free school be established within the limits of districts No.       , in the town of       , and No.       , in the town of       , pursuant to the provisions of chapter 555 of the Laws of 1864 and the amendments thereof." The meeting may adjourn from time to time by the vote of a majority of those present, although less than one-third of the inhabitants, for not more than ten days at each time. At any such adjourned session the question may be taken on the resolution above mentioned; but when it has once been decided in the negative, by failing to receive a two-third vote, no further proceedings are in order except a motion to adjourn without day, or a motion to reconsider, which latter motion may be carried by a majority vote, and the session may then be adjourned. On the reconsideration, at the adjourned meeting, if the resolution should be again lost, all further proceedings are to be suspended for one year.

If the resolution to establish a free school shall pass the meeting, it should next fix upon the number of trustees to constitute the board of education. As the statute has made no provision for subsequently increasing or diminishing the number of the board, it should not be fixed without mature deliberation. It may be a number not divisible by three, as five or seven, and in such case the meeting may divide them into unequal classes, by a resolution which should be adopted before proceeding to an election.

The law is silent about the manner of taking the vote. It may, therefore, be by calling the ayes and noes, or by the raising of hands, or by a division of the house and count. All that is required is that one-third of the legal voters shall be present, and that two-thirds of those present and voting shall be in the affirmative. A vote by acclamation would not be considered a compliance with the law, for want of certainty.

§ 5. Any such meeting, held as aforesaid, shall be organized by the appointment of a chairman and secretary, and may be ad-



journeled from time to time by a majority vote, provided any such adjournment shall not be for a longer period than ten days; and, at any such meeting, where at least one-third of the legal voters of such district, or of each of such districts (to determine which the lists of such voters made out by the clerks of such districts respectively, or other person who shall be especially designated to serve the notice aforesaid and to make such lists, shall be *prima facie* evidence); whenever the question whether a union free school shall be established, in pursuance of the call for such meeting, shall be determined in the affirmative by a two-thirds vote of those present and voting, it shall thereafter be lawful for such meeting to proceed to the election by ballot of not less than three nor more than nine trustees, who shall, by the order of such meeting, be divided into three several classes; the first class to hold until one, the second until two and the third until three years from the second Tuesday in October coincident with or following, except in the cases in the next section provided for; and when the trustees so elected shall enter upon their office, the office of any existing trustee or trustees shall cease, except for the purposes stated in section eleven of title six of this act. The said trustees and their successors in office shall constitute a board of education of and for the union free school district for which they are elected, and the designation of such district as union free school district number , of the town of , shall be made by the school commissioner having jurisdiction of the district; and the said board shall have the name and style of the board of education of (adding the designation aforesaid). Copies of the said call, minutes of said meeting or meetings, duly certified by the chairman and secretary thereof, shall be by them, or either of them, transmitted and deposited, one to and with the town clerk, one to and with the school commissioner or commissioners in whose jurisdiction said districts are located, and one to and with the Superintendent of Public Instruction; but when, at any such meeting, the question as to the establishment of a union free school shall not be decided in the affirmative, as aforesaid, then all further proceedings at such meeting, except a motion to reconsider or adjourn, shall be dispensed with, and no such meeting shall be again called within one year thereafter.

Where a joint meeting is held, at which one-third of the voters of each district is present, the union free school organization may be adopted by a vote of two-thirds of the whole number of voters present and voting at such meeting.

Where a board of education is elected under the provisions of this section, prior to the second Tuesday of October, they are to enter upon their duties *at once*, but their terms of office will be for one, two and three years from the succeeding second Tuesday of October.

§ 6. Whenever said board of education shall be constituted for any district or districts whose limits correspond with those of any incorporated village or city, the trustees so elected shall, by the order of such meeting, be divided into three several classes; the first class to serve until one, the second until two, and the third until three years after the day of the next charter election in such village or city, and their regular term of service shall be computed from the several days of such charter elections, and not from the second Tuesday in October. And thereafter there shall be annually elected in such villages and cities, by separate ballot, to be indorsed "school trustees," in the same manner as the charter officers thereof, trustees of the said union free schools to supply the places of those whose terms by the classification aforesaid are about to expire.

§ 7. The said boards of education are hereby severally created bodies corporate, and each shall at its first meeting, and at each annual meeting thereafter, elect one of their number president, another the clerk thereof, the latter of whom shall also be the general librarian for the district. In districts other than those whose limits correspond with those of any city or incorporated village, said board shall have power to appoint one of the taxable inhabitants of their district treasurer, and another collector of the moneys to be raised within the same for school purposes, who shall severally hold such appointments during the pleasure of the board. Such treasurer and collector shall each, and within ten days after notice in writing of his appointment, duly served upon him, and before entering upon the duties of his office, execute and deliver to the said board of education a bond, with such sufficient penalty and sureties as the board may require, conditioned for the faithful discharge of the duties of his office. And in case such bond shall not be given within the time specified, such office shall thereby become

vacant, and said board shall thereupon, by appointment, supply such vacancy.

A member of the board of education cannot serve as treasurer nor collector.

§ 8. The corporate authorities of any incorporated village or city, in which any such union free school shall be established, shall have power, and it shall be their duty to raise, from time to time, by tax, to be levied upon all the real and personal property in said city or village, as by law provided for the defraying of the expenses of its municipal government, such sum or sums as the board of education established therein shall declare necessary for the furtherance of any of the powers vested in them by law. The sums so declared necessary shall be set forth in a detailed statement in writing, addressed to the corporate authorities by the board of education, giving the various purposes of anticipated expenditure, and the amount necessary for each ; and the said corporate authorities shall have no power to withhold the sums so declared to be necessary for teachers' wages and the ordinary contingent expenses of supporting the school or schools of said district.

This section implies that the "detailed statement" shall be an estimate to be presented to the village or city authorities, before the board of education has incurred the expenses.

What are the "ordinary contingent expenses" may be a subject of dispute, but they will necessarily include fuel, cleaning, repairs, furniture to replace what has been broken or worn out, and similar expenditures.

If such questions arise in any district, and cannot be settled by the inhabitants, they are to be referred to the Superintendent under section 18 of this title.

It would seem also that the law must be held to apply only to such districts as are coincident, or correspondent, in boundaries with the corporate limits of cities or villages.

§ 9. In case the corporate authorities shall refuse to provide for any or all of the other purposes of expenditure declared necessary in the statement aforesaid, they shall communicate in writing to the said board of education their objections to each and every expenditure which they refuse to allow, and thereupon the said board of education shall cause the said communication to be published six times in at least one paper published or circulating in such district, and the said corporate authorities may, at any time, reconsider their action in refusing to allow such expenditures, or

any of them, or may allow such other sums for any or all of such expenditures as the board of education, in any subsequent or modified statement, may recommend. The annual meeting of the board of education of every union free school district shall be held on the third Tuesday of October in each year.

§ 10. A majority of the voters of any union free school district other than those whose limits correspond with an incorporated city or village, present at any annual or special district meeting, duly convened, may authorize such acts, and vote such taxes as they shall deem expedient for making additions, alterations or improvements to or in the sites or structures belonging to the district, or for the purchase of other sites or structures, or for the erection of new buildings, or for buying apparatus or fixtures, or for paying the wages of teachers and the necessary expenses of the school, or for such other purpose relating to the support and welfare of the school as they may, by resolution, approve; and they may direct the moneys so voted to be levied in one sum, or by installments; and the board of education shall make out their tax list, and attach their warrant thereto, in the manner provided in article seven of title seven of this act, for the collection of school district taxes, and shall cause such taxes or such installments to be collected at such times as they shall become due. No vote to raise money shall be rescinded, nor the amount thereof be reduced at any subsequent meeting, unless the same be done within ten days after the same shall have been first voted.

This section must be understood as intending to confer upon the inhabitants, assembled in district meeting, powers additional to those which they would have possessed under the general law, if they had not organized a free school district. It gives them the power to raise such sums as they may deem expedient, without limitation as to the amount for making additions and improvements to sites, buildings, fixtures and apparatus. These are mere investments of money for permanent objects, which remain as a part of the *capital* of the district, and are in their nature different from those expenditures which disappear in the using, and leave nothing behind capable of sale, and thereby of replacing their original cost. There is no reason in law or in the grammatical construction of the act for supposing that, in regard to raising money for these specially enumerated objects, any other rule is to prevail than that of the common law, which makes a majority vote equivalent to a unanimous one.

In the vote authorizing a tax, the inhabitants may direct at what time and by what installments it shall be raised. The sums and periods may be equal or unequal in their discretion.

§ 11. Any moneys required to pay teachers' wages, in a union free school, or in the academical department thereof, after the due application of the school moneys thereto, shall be raised by tax, and not by rate bill.

§ 12. Every union free school district shall, for all the purposes of the apportionment and distribution of school moneys, be regarded and recognized as a school district.

§ 13. The said board of education of every union free school district shall severally have power:

1. To pass such by-laws as they may deem proper for the regulation and exercise of their lawful business and powers;

2. To establish such rules and regulations concerning the order and discipline of the school or schools, in the several departments thereof, as they may deem necessary to secure the best educational results;

3. To grade and classify the school or schools of the district, and to regulate the admission of pupils and their transfer from one class or department to another, as their scholarship shall warrant;

4. To prescribe the text-books to be used in the schools, and to compel a uniformity in the use of the same, and to furnish the same to pupils out of any moneys provided for that purpose;

5. To take charge and possession of the school-houses, sites, lots, furniture, books, apparatus, and all school property within their respective districts; and the title of the same shall be vested respectively in said board of education, and the same shall not be subject to taxation for any purpose;

6. To take and hold for the use of the said schools, or of any department of the same, any real estate transferred to it by gift, grant, bequest or devise, or any gift, legacy or annuity, of whatever kind, given or bequeathed to the said board, and apply the same, or the interest or proceeds thereof, according to the instructions of the donor or testator;

7. To have, in all respects, the superintendence, management and control of the said union free schools, and to establish in the same an academical department, whenever in their judgment the same is warranted by the demand for such instruction; to receive into said union free schools any pupils residing out of said districts, and to regulate and establish the tuition fees of such non-resident pupils in the several departments of said schools; to

provide fuel, furniture, apparatus, and other necessities for the use of said schools, and to appoint such librarians as they may, from time to time, deem necessary ;

8. To contract with and employ qualified teachers in the several departments of instruction, in all not less than one for every fifty pupils attending such schools ; to remove them at any time for neglect of duty or for immoral conduct, and to pay the wages of such teachers out of the moneys appropriated for that purpose ;

9. To fill any vacancy which may happen in said board by reason of the death, removal or refusal to serve of any member or officer of said board ; and the person so appointed in the place of any such member of the board shall hold his office until the next election of trustees, as by this act provided ;

10. To remove any member of their board for official misconduct. But a written copy of all charges made of such misconduct shall be served upon him at least ten days before the time appointed for a hearing of the same ; and he shall be allowed a full and fair opportunity to refute such charges before removal ;

11. And generally to possess all the powers and privileges, and be subject to all the duties in respect to the schools, or the common school departments in any union free school in said districts, which the trustees of common schools now possess or are subject to, not inconsistent with the provisions of this title ; and to enjoy, whenever an academical department shall be by them established, all the immunities and privileges now enjoyed by the trustees of academies in this State.

Such exposition as may be required of the power and duties of the board of education, under this section, will be found in the preceding pages under the similar provisions of the general law relating to the different school officers. Under the eleventh subdivision it is the duty of the board of education to make an annual report to the school commissioner, and to submit an annual account to the inhabitants assembled in district meeting, in the same manner as the trustees of ordinary districts. Such reports should be adopted at a meeting of the board, and authenticated by the signature of its president and secretary.

Trustees of these districts are not prohibited from employing teachers related to them within two degrees.

§ 14. In union free school districts other than those whose limits correspond with any city or incorporated village, the board of education shall have power to call special meetings of the inhabitants,

in the manner provided in section six of title seven of this act for calling special meetings of districts by trustees, and they shall give notice of the time and place of holding the annual school district meeting, which shall be held on the second Tuesday of October in each year.

§ 15. It shall be the duty of the board at the annual meeting of the district, besides any other report or statement required by law, to present a detailed statement in writing of the amount of money which will be required for the ensuing year for school purposes exclusive of the public moneys, specifying the several purposes for which it will be required, and the amount for each, but nothing in this section contained shall be construed to prevent the board from presenting such statement at any special meeting called for the purpose, nor from presenting a supplementary and amended statement or estimate at any time.

§ 16. After the presentation of such a statement, the question shall be taken upon voting the necessary taxes to meet the estimated expenditures, and, when demanded by any voter present, the question shall be taken upon each item separately, and the inhabitants may increase the amount of any estimated expenditures or reduce the same, except for teachers' wages, and the ordinary contingent expenses of the school or schools.

§ 17. If the inhabitants shall neglect or refuse to vote the sum or sums estimated necessary for teachers' wages, after applying thereto the public school moneys, and other moneys received or to be received for that purpose, provided such estimate shall be for no more than one teacher for each fifty pupils attending such school, or if they shall neglect or refuse to vote the sum or sums estimated necessary for ordinary contingent expenses, the board of education may levy a tax for the same, in like manner as if the same had been voted by the inhabitants.

§ 18. If any question shall arise as to what are ordinary contingent expenses, the same may be referred to the Superintendent of Public Instruction, by a statement in writing, signed by one or more of each of the opposing parties upon the question, and the decision of the Superintendent shall be conclusive.

§ 19. It shall be the duty of each of the said boards of education, elected pursuant to the provisions of this title, to have a regular meeting at least once in each quarter, and at such meetings

to appoint one or more committees, to visit every school or department under the supervision of said board, and such committees shall visit all said schools at least twice in each quarter, and report at the next regular meeting of the board on the condition and prospects thereof.

§ 20. It shall also be the duty of said boards, respectively, to have reference in all their expenditures and contracts to the amount of moneys which shall be appropriated, or subject to their order or drafts, during the current year, and not to exceed that amount. And said boards shall severally apply all the moneys apportioned to the common school districts under their charge, to the departments below the academical; and all moneys from the literature fund or otherwise, appropriated for the support of the academical department, to the latter departments.

§ 21. All moneys raised for the use of the union free schools in any city or incorporated village, or apportioned to the same from the income of the literature, common school or United States deposit funds, or otherwise, shall be paid into the treasury of such city or village, to the credit of the board of education therein; and the funds so received into such treasury shall be kept separate and distinct from any other funds received into the said treasury. And the officer having the charge thereof shall give such additional security for the safe custody thereof as the corporate authorities of such city or village shall require. No money shall be drawn from such funds, credited to the several boards of education, unless in pursuance of a resolution or resolutions of said board, and on drafts drawn by the president and countersigned by the secretary, payable to the order of the person or persons entitled to receive such money, and stating on their face the purpose or service for which such moneys have been authorized to be paid by the said board of education.

§ 22. All moneys raised for the use of said union free schools, other than those whose limits correspond with those of any cities and incorporated villages, or apportioned from the income of the literature or common school or United States deposit funds, or otherwise, shall be paid to the respective treasurers of the said several boards of education entitled to receive the same, and be by them applied to the uses of said several boards, who shall annually render their accounts of all moneys received and expended by them for the use of said schools, with every voucher for the same,



and certified copies of all orders of the said boards touching the same, to the school commissioner of the town in which the principal school-house of the district is located.

§ 23. Every academical department, established as aforesaid, shall be under the visitation of the Regents of the University, and shall be subject, in its course of education and matters pertaining thereto (but not in reference to the buildings or erections in which the same is held), to all the regulations made in regard to academies by the said Regents. In such departments the qualifications for the entrance of any pupil shall be as high as those established by the said Regents for participation in the literature fund of any academy of the State under their supervision.

§ 24. Whenever a union free school shall be established under the provisions of this title, and there shall exist within its district an academy, the board of education, if thereto authorized by a vote of the voters of the district, may adopt such academy as the academical department of the district, with the consent of the trustees of the academy, and thereupon the trustees, by a resolution to be attested by the signatures of the officers of the board, and filed in the office of the clerk of the county, shall declare their offices vacant, and thereafter the said academy shall be the academical department of such union free school.

The effect of this section is, probably, to transfer to the board of education title to all the property of the academy, provided the proceedings are all regular. For greater security, however, the trustees of the academy ought to execute and deliver to the board of education a deed of their land and buildings, which should be properly acknowledged and recorded.

§ 25. Every union free school district, in all its departments, shall be subject to the visitation of the Superintendent of Public Instruction. He is charged with the general supervision of its board of education, and their management and conduct of all its departments of instruction. And every board of education shall annually, between the first and fifteenth day of October, make to the commissioner having jurisdiction, and deposit in the town clerk's office, a report for the preceding school year, of all matters and things which trustees of a school district are required to report, and of all such other matters and things as the Superintendent shall, from time to time, require; and shall also, whenever thereto

required by the Superintendent of Public Instruction, report fully to him upon any particular matter or thing; and such reports shall be in such form, and so authenticated, as the Superintendent shall, from time to time, require.

The Superintendent annually prepares and furnishes blanks for the annual reports of the trustees. For instruction as to the filling up of the blanks, reference may be had to section 64 of title 7. If the Superintendent wishes for any information not contained in the annual reports of trustees, he will call for a special report.

§ 26. For cause shown, and after giving notice of the charge, and opportunity of defense, the Superintendent of Public Instruction may remove any member of a board of education. Willful disobedience of any lawful requirement of the Superintendent, or a want of due diligence in obeying such requirement, is cause of removal.

The procedure under this section would be the same substantially as that for the removal of any school officer, as provided under section 18 of title 1 of this act.

§ 27. The provisions of this title shall apply to all union free schools heretofore organized pursuant to the provisions of chapter four hundred and thirty-three of the Laws of eighteen hundred and fifty-three.

## TITLE X

### OF SCHOOLS FOR COLORED CHILDREN.

SECTION 1. The school authorities of any city or incorporated village, the schools of which are or shall be organized under title nine of this act or under special acts, may, when they shall deem it expedient, establish a separate school or separate schools for the instruction of children and youth of African descent, resident therein, and over five and under twenty-one years of age; and such school or schools shall be supported in the same manner and to the same extent as the school or schools supported therein for white children, and they shall be subject to the same rules and regulations, and be furnished with facilities for instruction equal to those furnished to the white schools therein.

§ 2. The trustees of any union school district, or of any school district organized under a special act, may, when the inhabitants of any school district shall so determine, by resolution at any annual meeting, or at a special meeting called for that purpose, establish a separate school or separate schools for the instruction of such colored children resident therein, and such schools shall be supported in the same manner, and receive the same care, and be furnished with the same facilities for instruction as the white schools therein.

§ 3. No person shall be employed to teach any of such schools who shall not, at the time of such employment, be legally qualified.

§ 4. Section one hundred and forty-seven of chapter four hundred and eighty, Laws of eighteen hundred and forty-seven, is hereby repealed.

The common schools of all the districts not mentioned in this title are as free to children and youth of African descent as to those of any other race.

## TITLE XI.

### OF TEACHERS' INSTITUTES.

SECTION 1. It shall be the duty of every school commissioner, at least once in each year, to organize in his own district, or, in concert with one or more commissioners in the same county, to organize in and for the combined districts, a teachers' institute, and to induce, if possible, all the teachers in his district to be present and take part in its exercises.

§ 2. The commissioner or commissioners, subject always to the advice and direction of the Superintendent of Public Instruction, shall, in such form and manner as may be deemed most effectual, give public notice to the teachers of the district, or combined districts, and to all others who may desire to become such, of the time when and the place where the institute will be organized.

§ 3. The Superintendent of Public Instruction shall advise and co-operate with the school commissioners in fixing the times and places of holding the teachers' institute; and he shall have power to employ, or cause the school commissioners to employ, suitable persons, at a reasonable compensation, to conduct and teach the institutes; and he shall visit, or cause to be visited by persons

employed in the Department of Public Instruction, such and so many of the institutes as he possibly can, for the purpose of examining into the course and manner of instruction pursued, and of rendering such assistance as he may find expedient; and he shall establish the bases upon which the yearly appropriation for the support of teachers' institutes shall be distributed to the several institutes, and the term or terms during which the same may be held, having reference, in the establishment of such regulations, to the number of teachers in the county, district or combined districts, and in attendance at the institute, to the length of time during which they shall be held, to the facilities for attendance upon them, and to local disadvantages requiring especial consideration.

§ 4. The Superintendent of Public Instruction may establish such regulations in regard to certificates of qualification or recommendation, which may be issued by school commissioners, as will in his judgment furnish incentives and encouragement to teachers to attend the institutes; and the closing of his school by a teacher for the time during which an institute shall be held in and for the county or school commissioner district in which his school is, and which institute he shall have attended during the time for which he closed his school, shall not work a forfeiture of the contract under which he is teaching; and he shall be allowed to make up for the time spent in attending the institute by teaching the school the same length of time immediately at the end of the term for which he contracted to teach.

§ 5. The trustees of every school district are hereby directed to give to the teacher or teachers employed by them the whole of the time spent by such teacher or teachers in attending at any regular session or sessions of an institute in a county embracing the school district, or a part thereof, without deducting any thing from his or their wages for the time so spent; and whenever the trustees' report shows that a district school has been supported for the full time required by law, including the time spent by the teacher or teachers in their employ in attendance upon such institute, and that the trustees have given the teacher or teachers the time of such absence, and have not deducted any thing from his or their wages on account thereof, the Superintendent of Public Instruction may include the district in his apportionment of the State

school moneys, and direct that it be included by the school commissioner or commissioners in their apportionment of school moneys, provided always that such school district be in all other respects entitled to be included in such apportionment.

§ 6. The Treasurer shall pay, on the warrant of the Comptroller, to the order of any one or more of the school commissioners, such sum or sums of money as the Superintendent of Public Instruction shall certify to be due to them for expenses in holding a teachers' institute; and, upon the like warrant and certificate, to the order of any persons employed by the Superintendent to conduct and teach any teachers' institute, his reasonable compensation as certified by the Superintendent.

§ 7. The school commissioner or commissioners, by whom any teachers' institute shall be organized, shall transmit to the Superintendent of Public Instruction a catalogue of the names of all persons who shall have attended such institute, with such other statistical information, in such form and within such time as may be prescribed by said Superintendent.

The first law for the establishment of teachers' institutes was passed November 13, 1847. For several years previous, assemblies of teachers under this name had been held in various parts of the State. The law was passed to aid in testing what many deemed a doubtful experiment. The institute has become a useful part of the common school system.

It is now the duty of every school commissioner, alone, or in concert with one or more commissioners of the same county, to organize an institute every year, and to invite and urge the attendance of all teachers within his or their jurisdiction.

Probably the best mode of giving notice of the time and place of holding an institute is by advertisement in the county papers, taking care to send by mail a copy to each teacher.

The commissioners should also enter into a correspondence with the Superintendent, that the institutes may be arranged as to time and place, so that several appointments may not be made for the same days in the same month. It is desirable that they should be distributed through the summer and autumn, so that the same instructors may be engaged for many of them.

The place appointed for holding an institute should be selected with a view to the convenience and pecuniary interests of the teachers. It should be a village of such size as to afford ample accommodations for all in board and lodging. Its situation should be such as to be accessible by good roads.

The time and place being fixed, the Superintendent will co-operate by engaging the best and most efficient conductors and teachers, who will attend as many institutes as they can visit.

The bases of distribution mentioned in the third section, and special instructions, will be communicated every year in circulars to commissioners.

During the year, as occasion may offer, every commissioner should converse with teachers, advising and urging them to attend the institute. He should also consult with them about the organization and conduct of the institute. The commissioner should think of, mature and propose some plan for the accomplishment of some object at every annual assembling. The whole field of education cannot be cultivated at once. A week or ten days should not be wasted in striving to do too much, but should be improved in doing one or two things well. If there is a defect in the manner of teaching in his district, if particular studies have been neglected, if errors have crept into the schools, he should cause the institute to be so conducted as to cure these evils. In this way he will accomplish results. The teachers will be conscious of improvement.

An institute is meant to be a short training school. And the training should be in those particulars in which there is the greatest deficiency. A club foot by skillful surgery may be made straight and useful, a squint eye cured of its obliquity, and a palsied limb be restored to motion and strength. The commissioners are therefore advised to direct their training to the surgery and cure of special defects and evils. Let all have something to do. Let the work go on briskly. Let there be no idle moments, and there will be no craving for idle amusements.

Lectures should form only incidents in the proceedings. They should be short and appropriate to the matter in hand. Teachers attend an institute not to hear an essay from a popular speaker on a favorite hobby, but to learn how to teach children.

As an inducement to teachers to attend the institutes the trustees of school districts, by the fifth section of the title, are authorized to pay them for the time passed in attendance, as if it was employed in teaching school; and when this fact appears in their annual reports, the Superintendent will not withhold from the district its share in the apportionment of public moneys. The time spent by a teacher at an institute is by this law made a fulfillment of his contract to teach, and a part of the twenty-eight weeks during which school must be kept.

It is optional, however, for the trustees to employ teachers under the fourth section, by which the teacher can continue his school beyond the time limited in his contract, as many days as he was absent at an institute.

To enable the commissioners to comply with the provisions of section seven, the Superintendent will supply them with forms for a register of attendance. He will also annually give them instructions how to make up and render their accounts, and furnish them with blanks for any statistical information desired.

## TITLE XII.

ON APPEALS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

SECTION 1. Any person conceiving himself aggrieved in consequence of any decision made :

1. By any school district meeting ;
2. By any school commissioner or school commissioners and other officers, in forming or altering, or refusing to form or alter, any school district, or in refusing to apportion any school moneys to any such district or part of a district ;
3. By a supervisor in refusing to pay any such moneys to any such district ;
4. By the trustees of any district in paying or refusing to pay any teacher, or in refusing to admit any scholar gratuitously into any school ;
5. By any trustees of any school district library concerning such library, or the books therein, or the use of such books ;
6. By any district meeting in relation to the library ;
7. By any other official act or decision concerning any other matter under this act, or any other act pertaining to common schools, may appeal to the Superintendent of Public Instruction, who is hereby authorized and required to examine and decide the same ; and his decision shall be final and conclusive, and not subject to question or review in any place or court whatever.

§ 2. The Superintendent, in reference to such appeals, shall have power :

1. To regulate the practice therein ;
2. To determine whether an appeal shall stay proceedings, and prescribe conditions upon which it shall or shall not so operate ;
3. To decline to entertain, or to dismiss, an appeal, when it shall appear that the appellant has no interest in the matter appealed from, and that the matter is not a matter of public concern, and that the person injuriously affected by the act or decision appealed from is incompetent to appeal ;
4. To make all orders, by directing the levying of taxes or otherwise, which may, in his judgment, be proper or necessary to give effect to his decision.

§ 3. The Superintendent shall file, arrange in the order of time, and keep in his office, so that they may be at all times accessible, all the proceedings on every appeal to him under this title, includ-

ing his decision and orders founded thereon ; and copies of all such papers and proceedings, authenticated by him under his seal of office, shall be evidence equally with the originals.

The right of appeal to the school department was first given in 1822. It has since remained with the head of the department, except for the short period from 1841 to 1847, during which appeals were in the first instance brought to the county superintendents, from whose decisions an appeal could be brought to the Superintendent.

The supreme court, in 3 *Denio*, 177, declare that "this provision was intended as a cheap and expeditious mode of settling most, if not all, of the difficulties and disputes arising in the course of the execution of the law organizing and regulating common schools. The Legislature has virtually declared that, where a party will forego that convenient method of adjusting such a controversy as the present, and resort to the ordinary courts, it shall be at his own expense as regards costs." In 11 *Wend.*, 91, the court made substantially the same remarks when refusing to give relief by an action of trespass against trustees for their proceedings in selling the plaintiff's property under a tax list and warrant which were in more than one respect erroneous. A further reason for preferring the remedy by appeal to a common law action is, that the Superintendent can dispose of all the questions connected with the case in a single decision ; where a proceeding is wrong, he can not only reverse it, but direct the appropriate remedy, so as to redress all persons who have been injuriously affected ; while an action at law inures only to the benefit of the person who brings it, and only gives pecuniary damages, without substituting a correct proceeding in the place of an erroneous one.

No person can sustain an appeal unless he is aggrieved, that is, injured in his rights by the act or decision of which he complains. Generally, every inhabitant of a district is aggrieved by the wrongful act or omission of a trustee or school commissioner, by which money or property is disposed of, or not secured for the benefit of the district. But no one is aggrieved by another being included in a tax list, although other inhabitants are by the omission of one who should be taxed ; and appeals may be made by trustees in behalf of their district whenever they are aggrieved.

Before giving the rules which have been made to regulate the practice upon appeals, it is proper to call attention to some general principles in relation to the mode of drawing them up. In the first place, the department wants *facts*, and not arguments, far less injurious imputations upon the motives of parties. The facts should be distinctly averred, so that an indictment for perjury would lie if they are willfully misstated. Therefore, they should not be stated by way of recital under a "whereas," or in any similar indirect way. Every material fact should be stated with all practicable particularity as to time, quantities, numbers, etc. Where a statement is ambiguous or doubtful in meaning, that construction is adopted which is most unfavorable to the party making it. The appellant should make out his own case ; so that if no answer is put in, the



Superintendent will have, *in the appeal itself*, all the facts to inform him what order ought to be made. No decision can be based upon any facts except those which are stated in the appeal, and which the opposite party has had the opportunity to controvert, although such facts may have been brought to the knowledge of the Superintendent in some other way. The record itself must contain enough to support the decision.

In the bringing and answering of appeals, it is recommended that the papers be written upon foolscap, ruled as paper is ruled for legal pleadings. Such paper is kept by all stationers and booksellers, and is known as law-paper or *legal cap*. The several sheets should be written, as lawyers write their papers, on both sides, so that the bottom of the first page is the top of the second, and the sheets are fastened with tape, or attached by paste, at the ends, and not at the sides. Manuscript arranged in this fashion is more easily handled, folded and filed. They should be smoothly folded, and indorsed with the title of the case, briefly stating the substance of the appeal or answer, with the name of the parties, and the district, town and county affected. The party sending an appeal or answer should also indorse on the papers his post-office address.

#### LETTERS OF INQUIRY AND EX PARTE APPLICATIONS.

Perhaps the most onerous duty of the Superintendent of Public Instruction is one which is not mentioned in the statutes. It is that of replying to applications for advice respecting the construction of the school laws, and the legality of proceedings of district meetings, of trustees, and other school officers. The effort has been made to give in this volume a full exposition, under the appropriate section, of the questions which have been found, by the experience of the department, to embarrass officers in the discharge of their duties. If, however, after examination of the instructions herein contained, it is conceived necessary to apply to the department for further information, it must be borne in mind :

1. That no *decision* can be made on any subject affecting in any manner the rights or interests of other parties, without both sides having been heard or having been invited to present their statements. This occurs only when an appeal is regularly brought in the mode prescribed by the regulations, or where all parties have signed, and united in transmitting, a statement of facts to which they agree ;

2. That an *opinion*, given under any other circumstances, must be regarded as valid only so far as the statement on which it is founded represents fairly and fully all the facts pertinent to the case. It frequently happens that two parties, applying for advice upon the same question, state the facts so differently that they receive very dissimilar replies, and are thus confirmed in their difference of opinion, instead of being reconciled. No opinion should be asked upon an abstract question or a hypothetical case ; but the actual *facts* out of which the question arises should be clearly and briefly stated, with all practicable certainty as to dates and number, and in such a manner as to indicate the object of the inquiry. The last is advisable, because a proceeding may be

legally good and sufficient for some purposes, and as against some persons, while it is invalid for other purposes and against other parties. The *facts* should be stated in contradistinction to mere *evidence* on the one hand, and to the writer's *inferences* as to the effect of those facts, on the other.

To facilitate the business of the department, and the prompt and correct transmission of answers to its correspondents, it is desirable that all letters should be written on foolscap paper, with a clear margin of one inch on the left hand edge of the page. They should always specify the number of the school district, together with the name of the town or towns of which it constitutes a part, and the county in which the latter are situated. The writer should, in all cases, no matter how frequently he may write, state at what post-office he desires to be addressed.

Whenever reference may be necessary to any previous letter from the department, *its date should be given*. This enables the department to ascertain at once its contents and those of the paper to which it was a reply.

Every application for the exercise of any legal power of the department, as for special permission to be included in the apportionment of public money, etc., must be supported by an affidavit stating the facts on which it is based. When any person is interested in opposing it, the application must be accompanied with proof of service of a copy thereof on such party, in the same manner as required upon appeals.

#### RULES RESPECTING APPEALS.

1. An appeal must be in writing, addressed "To the Superintendent of Public Instruction," and signed by the appellant. When made by the trustees of a district, it must be signed by all the trustees, or a reason must be given for the omission of any, verified by the oath of the appellant, or of some person acquainted with such reason.

2. A copy of the appeal, and of all the statements, maps and papers intended to be presented in support of it, with the affidavit in verification of the same, must be served on the officers whose act or decision is complained of, or some of them; or if it be from the decision or proceeding of a district meeting, upon the district clerk or one of the trustees, whose duty it is to cause information of such appeal to be given to the inhabitants who voted for the decision or proceeding appealed from. Immediately after the service of such copy, the original, together with an affidavit proving the service of a copy thereof, and stating the time and manner of the service and the name and official character of the person upon whom such service was made, must be transmitted to the Department of Public Instruction, at Albany. If an answer is received to an appeal which has not been transmitted to the department, such appeal will be dismissed.

3. Such service must be made and the original sent to the department within thirty days after the making of the decision or the performance of the act complained of, or within that time after the knowledge of the cause of complaint came to the appellant, or some satisfactory excuse must be rendered, in the appeal, for the delay.

4. The party on whom the appeal was served must, within ten days from the time of such service, answer the same, either by concurring in a statement of facts with the appellant, or by a separate answer. Such statement and answer must be signed by all the trustees or other officers whose act, omission or decision is appealed from, or a good reason on oath must be given for the omission of the signature of any of them. Such answer must be verified by oath, and a copy served on the appellants or some one of them.

5. So far as the parties concur in a statement, no oath will be required to it. But all facts, maps or papers, not agreed upon by them and evidenced by their signature on both sides, must be verified by oath.

6. All oaths required by these regulations may be taken before any person authorized to take the acknowledgment of deeds, or to take affidavits.

7. A copy of the answer, and of all the statements, maps and papers intended to be presented in support of it, must be served upon the appellants, or some one of them, within ten days after service of a copy of the appeal, unless further time be given by the State Superintendent, on application, in special cases; but no replication or rejoinder shall be allowed, except by permission of the State Superintendent; in which case such replication and rejoinder shall be duly verified by oath, and copies thereof served on the opposite party.

8. Proof of the service of copies of the appeal, answer and all other papers intended to be used on the hearing of such appeal, must, in all cases, accompany the same.

9. When any proceeding of a district meeting is appealed from, and when the inhabitants of a district generally are interested in the matter of the appeal, and in all cases where an inhabitant might be an appellant had the decision or proceeding been the opposite of that which was made or had, any one or more of such inhabitants may answer the appeal, with or without the trustees.

10. Where the appeal has relation to the alteration or formation of a school district, it must be accompanied by a map, exhibiting the site of the school-house, the roads, the old and new lines of districts, the different lots, the particular location and distance from the school-houses of the persons aggrieved, and their relative distance, if there are two or more school-houses in question. Also, a list of all the taxable inhabitants in the district or territory to be affected by the question, showing in separate columns the valuation of their property, taken from the last assessment roll, and the number of children between five and twenty-one belonging to each person, distinguishing the districts to which they respectively belong.

11. An appeal of itself no longer stays proceedings. If the party desires such stay, he should ask for it. The Superintendent will grant a stay, or not, as in his judgment it may be proper, or may subserve the interests of either party, or the public.

12. The decision of the Superintendent in every case will contain the order, or directions, necessary and proper for giving effect to his decisions.

## TITLE XIII.

## MISCELLANEOUS PROVISIONS.

SECTION 1. Whenever the share of school moneys, or any portion thereof, apportioned to any town, school district or separate neighborhood, or any money to which a town, school district or separate neighborhood would have been entitled, shall be lost, in consequence of any willful neglect of official duty by any school commissioner, town clerk, trustees or clerks of school districts, the officer or officers guilty of such neglect shall forfeit to the town, school district or separate neighborhood so losing the same, the full amount of such loss, with interest thereon.

§ 2. Where any penalty for the benefit of a school district, or of the schools of any school district, town, school commissioner district or county, shall be incurred, and the officer or officers whose duty it is by law to sue for the same shall willfully and unreasonably refuse or neglect to sue for the same, such officer or officers shall forfeit the amount of such penalty to the same use, and it shall be the duty of their successor or successors in office to sue for the same.

Whenever any penalty or forfeiture is declared to be for the benefit of a district, it is the duty of the trustees to sue for and enforce its collection.

Whenever any penalty or forfeiture is declared to be for the benefit of a town, it is the duty of the supervisor to prosecute.

Trustees may prosecute their predecessors in office for money embezzled or unlawfully used or withheld.

Trustees may prosecute collectors and their bail for moneys lost to the district by the neglect of the collectors, or which are embezzled by them.

Supervisors may prosecute their predecessors in office for penalties and forfeitures incurred by them, and for moneys embezzled or unlawfully used or withheld.

Trustees may prosecute district clerks, and supervisors town clerks, for money lost by their willful neglect of duty.

A public officer is bound to give to his official duties the same care and attention that a prudent man would give to his private business.

An officer who comes short of this is guilty of a willful neglect of duty.

§ 3. Any person who shall willfully disturb, interrupt, or disquiet any district school or school meeting in session, or any persons assembled, with the permission of the trustees of the district, in any district school-house, for the purpose of giving or receiving

instruction in any branch of education or learning, or in the science or practice of music, shall forfeit twenty-five dollars for the benefit of the school district.

§ 4. It shall be the duty of the trustees of the district, or the teacher of the school, and he shall have power, to enter a complaint against such offender before any justice of the peace of the county, or the mayor or any alderman, recorder or other magistrate of the city wherein the offense was committed. The magistrate, or other officer before whom the complaint is made, shall thereupon, by his warrant, directed to any constable or person, cause the person complained of to be arrested and brought before him for trial. If such person, on the charge being stated to him, shall plead guilty, the magistrate shall convict him; and, if he demands a trial by the magistrate, shall summarily try him; and, if he demands a trial by jury, the magistrate shall issue a venire, and impanel a jury for his trial, and he shall be tried in the same manner as in a court of special sessions.

§ 5. If any person convicted of the said offense do not immediately pay the penalty, with the costs of the prosecution, or give security to the satisfaction of the magistrate for the payment thereof within twenty days, the magistrate or other officer shall commit him to the common jail of the county, there to be imprisoned until the penalty and costs be paid, but not exceeding thirty days.

The three preceding sections are a substitute for the act of 1845 forbidding the disturbance of evening schools. The provisions of the sections of the present law are plain and unmistakable. Every person who violates them forfeits twenty-five dollars.

It is suggested that when the school-house is used for any other purpose than a district school, it would be proper to obtain the *written* permission of the trustees, as a safeguard against misunderstanding and forgetfulness.

§ 6. In any action against a school officer or officers, including supervisors of towns, in respect of their duties and powers under this act, for any act performed by virtue of or under color of their offices, or for any refusal or omission to perform any duty enjoined by law, and which might have been the subject of an appeal to the Superintendent, no costs shall be allowed to the plaintiff in cases where the court shall certify that it appeared on the trial that the defendants acted in good faith. But this provision shall

not extend to suits for penalties, nor to suits or proceedings to enforce the decisions of the Superintendent.

The term "action" in this section signifies a suit brought in any of the courts of this State. The denial of costs was intended to discourage the prosecution of school officers in the courts, and to encourage the bringing of all disputes and controversies relating to the administration of the schools to the Department of Public Instruction.

§ 7. Whenever the trustees, or any school district officer, shall have been instructed, by a resolution of the district meeting, to bring or defend an action or proceeding touching any district property or claim of the district, or involving its rights or interests, or to continue such action or defense, all their costs and reasonable expenses, as well as all costs and damages adjudged against them, shall be a district charge, and shall be levied by tax. If the amount claimed by them be disputed by a district meeting, it shall be adjusted by the county judge of any county in which the district or any part of it is situate.

§ 8. Whenever such trustees or any school district officer shall have brought or defended any such action or proceeding, without any such resolution of the district meeting, and after the final determination of such suit or proceeding shall present to any regular meeting of the inhabitants of the district an account in writing of all costs, charges and expenses paid by him or them, with the items thereof, and verified by his or their oath or affirmation, and a majority of the voters at such meeting shall so direct, it shall be the duty of the trustees to cause the same to be assessed upon and collected of the taxable property of said district, in the same manner as other taxes are by law assessed and collected; and, when so collected, the same shall be paid over, by an order upon the collector, to the officer or officers entitled to receive the same; but this provision shall not extend to suits for penalties, nor to suits or proceedings to enforce the decisions of the Superintendent of Public Instruction.

§ 9. Whenever any officer or officers mentioned in the last preceding section of this act shall have complied with the provisions of said section, and the inhabitants shall have refused to direct the trustees to levy a tax for the payment of the costs, charges and expenses therein mentioned, it shall be lawful for him or them then and there to give notice, orally and publicly, that he will

appeal to the county judge of the county in which the school-house of said district is located, from the refusal of said meeting to vote a tax for the payment of said claim, and the inhabitants may then and there, or at any subsequent district meeting, appoint one or more of the inhabitants of the district to protect the rights and interests of the district upon said appeal. And the officer or officers before mentioned shall, thereupon, within ten days, serve upon the clerk of said district (or, if there be no such clerk, upon the town clerk of the town) a copy of the aforesaid account so sworn to, together with a notice in writing, that on a certain day therein specified he or they intend to present such account to the county judge for settlement. And the clerk shall record such notice, together with the copy of the account, and the same shall be subject to the inspection of the inhabitants of the district. And it shall be the duty of the person or persons appointed by any district meeting for that purpose, to appear before the county judge on the day mentioned in the notice aforesaid, and to protect the rights of the district upon such settlement; and the expenses incurred by them in the performance of this duty shall be a charge upon said district, and the trustees, upon presentation of the account of such expenses, with the proper vouchers therefor, may levy a tax therefor, or add the same to any other tax to be levied by them; and their refusal to levy such tax for the payment of such expenses shall be subject to an appeal to the Superintendent of Public Instruction.

§ 10. Upon the appearance of the parties, or upon due proof of service of the notice and copy of the account, the county judge shall examine into the matter, and hear the proofs and allegations propounded by the parties, and decide by order whether or no the account, or any and what portion thereof, ought justly to be charged upon the district, and his decision shall be final; but no portion of such account shall be so ordered to be paid which shall appear to the county judge to have arisen from the willful neglect or misconduct of the claimant. The account, with the oath of the party claiming the same, shall be *prima facie* evidence of the correctness thereof. The county judge may adjourn the hearing from time to time, as justice shall seem to require.

§ 11. It shall be the duty of the trustees of any school district, within thirty days after service of a copy of such order upon them,

or upon the district clerk and notice thereof to them or any two of them, to cause the same to be entered at length in the book of records of said district, and to raise the amount thereby directed to be paid, by a tax upon the district, to be by them assessed and levied in the same manner as a tax voted by the district.

The above five sections have been substituted for the law which referred such claims for adjudication and settlement to the board of supervisors.

By subdivision 14 of section 16 of title 7 of this act, the people of a district may vote a tax "to pay the reasonable expenses incurred by district officers in defending suits, or appeals brought against them for their official acts, or in prosecuting suits or appeals by direction of the district against other parties."

It will be noticed that by sections six and eight, in suits for penalties, or to compel obedience to the decisions of the Superintendent, the provisions of this title in respect to costs are not applicable.

§ 12. For the support of the Indian schools, already established and which may be established under authority of chapter seventy-one of the Laws of eighteen hundred and fifty-six, the Superintendent of Public Instruction, in his annual general apportionment of the State school moneys appropriated for the support of common schools, shall make an equitable apportionment, as provided by section six of title three of this act; and the moneys which shall be thus apportioned, and those which have been apportioned for their support under authority of section four, chapter seventy-one of the Laws of eighteen hundred and fifty-six, shall be paid out of the treasury for expenditures authorized by law and actually incurred in support of such schools, upon the warrant of the Superintendent, countersigned by the Comptroller.

The following is a copy of chapter 71, Laws of 1856:

AN ACT to facilitate education and civilization among the Indians in this State.

Passed April 1, 1856; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

§ 1. The Superintendent of Public Instruction shall be charged with providing the means of education for all the Indian children in the State. He shall cause to be ascertained the condition of the various bands in the State, in respect to education; he shall establish schools in such places and of such character and description as he shall deem necessary; he shall employ superintendents for such schools, and shall, with the concurrence of the Comptroller and Secretary of State, cause to be erected, where necessary, convenient buildings for their accommodation.



§ 2. In the discharge of the duties imposed by this act, the said Superintendent shall endeavor to secure the co-operation of all the several bands of Indians, and for this purpose shall visit, by himself or his authorized agent, all the reservations where they reside, lay the matter before them in public assembly, inviting them to assist either by appropriating their public moneys to this object, or by setting apart lands and erecting suitable buildings, or by furnishing labor or materials for such buildings, or in any other way which he or they may suggest as most effectual for the promotion of this object.

§ 3. In any contract which may be entered into with the said Indians for the use or occupancy of any land for school grounds, sites or buildings, care shall be taken to protect the title of the Indians to their lands, and to reserve to the State the right to remove or otherwise dispose of all improvements made at the expense of the State.

§ 4. The Indian children in the State, between the ages of four and twenty-one years, shall be entitled to draw public money the same as white children. The Superintendent shall cause an annual enumeration of said Indian children to be made, and shall see that the public money to which they are ratably entitled is devoted exclusively to their education.

§ 5. To carry into effect the provisions of this act, the sum of five thousand dollars is hereby appropriated out of the surplus income of the United States deposit fund, to be paid by the Treasurer, on the warrant of the Comptroller, from time to time, to the order of the Superintendent of Public Instruction.

§ 6. The Superintendent shall take and file in his office vouchers and receipts for all the expenditures made under this act, subject to the inspection of the joint committee to examine the accounts of the Auditor and Treasurer, and shall annually report to the Legislature all his doings by virtue of the authority vested in him; and for this purpose said Superintendent may require full and detailed reports, in such form as he may prescribe, from those having the immediate supervision of any Indian schools in this State.

§ 13. The Superintendent of Public Instruction, so soon as may be after the passage of this act, shall prepare and cause to be printed, and distribute among the schools of the State, to each one copy, an edition of this statute, with brief annotations embodying such of the decisions of the courts of the State, and of the Superintendents of Common Schools and the Superintendents of Public Instruction as are applicable thereto, and such comments, explanations and instructions as he shall deem necessary or expedient; and the same shall be deposited with the district clerk, and kept by him for the use of the inhabitants.

§ 14. All provisions of law repugnant to or inconsistent with the provisions of this act are hereby repealed, saving always all rights of action vested under such prior provisions, and proceedings commenced for the assertion thereof; but nothing herein contained, unless it be so expressed, shall be construed, unless by inevitable implication, to revive any act or portion of an act heretofore repealed, nor to impair or in any manner affect or change any special law touching the schools or school system of any city or incorporated village of the State.

The amendments adopted by chapter 406, Laws of 1867, of the general school law, passed in 1864 and amended in 1866, have thus far, section by section, been incorporated in the Code.

The twenty-fifth section of chapter 406, Laws of 1867, is as follows :

"§ 25. This act shall take effect on the first day of October, eighteen hundred and sixty-seven. The State tax of one and one-fourth mills upon the dollar shall be imposed for the fiscal year commencing the first day of October, eighteen hundred and sixty-seven, and shall be assessed, raised, levied and collected in the manner prescribed by law."

The twenty-sixth section is in the following words :

"§ 26. Hereafter all moneys, now authorized by any special acts to be collected by rate bill for the payment of teachers' wages, shall be collected by tax and not by rate bill."

This is the most important section contained in any school act since 1814, when the rate bill was devised and incorporated into the law as a mode of collecting the deficiency in the payment of teachers' wages after the application of the public money.

The rate bill is that feature of our common school system which has been most prolific of dispute and controversy ; which has imposed the heaviest and most perplexing duties upon the trustees ; which has been burdensome and odious to the poor ; which has imposed an unequal and unjust tax upon the families more blessed in their children than in their basket and store, and which has been the great cause of irregular attendance and absenteeism. The following table exhibits the sums levied annually by rate bill since the year 1828 :

Year.	Amount.	Year.	Amount.	Year.	Amount.
1828,.....	\$297,048 49	1842,.....	\$509,376 97	1856,.....	\$427,956 07
1829,.....	346,807 20	1843,.....	447,565 97	1857,.....	390,515 50
1830,.....	374,001 54	1844,.....	453,127 78	1858 (9 months), ...	318,333 41
1831,.....	358,320 17	1845,.....	460,764 78	1858-59, .....	414,062 72
1832,.....	399,696 36	1846,.....	462,840 74	1859-60, .....	420,357 98
1833,.....	393,137 04	1847,.....	466,674 85	1860-61, .....	397,215 87
1834,.....	419,878 69	1848,.....	439,696 63	1861-62, .....	407,009 57
1835,.....	425,643 61	1849,.....	503,724 56	1862-63, .....	363,741 05
1836,.....	436,346 46	1850,.....	136,949 59	1863-64, ...	429,892 52
1837,.....	477,875 27	1851,.....	224,971 71	1864-65, .....	655,158 78
1838,.....	521,477 49	1852,.....	308,851 33	1865-66, .....	709,025 36
1839,.....	476,443 27	1853,.....	330,190 93	1866-67, .....	743,047 73
1840,.....	475,000 00	1854,.....	332,339 08		
1841,.....	463,638 22	1855,.....	461,779 13		
Total,.....					\$17,170,474 39

The average sum yearly collected by rate bill for the forty-one years included in the table is \$429,261.86.

For the fourteen years prior to 1828, it is probable that the amount collected by rate bill was \$250,000 a year. The aggregate will be, therefore, increased to \$20,670,474.39, for fifty-five years, and the yearly average will be \$382,971.74.

It will be observed that the sum raised by rate bill has uniformly exceeded, and generally quadrupled, the amount distributed from the income of the common school fund. It has as regularly exceeded the whole public money apportioned from the school fund, and the United States deposit fund, added to the county and town taxes, until the imposition of the State tax in 1851. The years to be excepted from these statements are 1850-1-2, the years of the free school controversy. The rate bill has been the special tax upon the patrons of the common schools. It may justly be styled a tax upon knowledge. The present law has merely transferred this burden from the fathers of families to the taxable property of the whole State.

The rate bill having been abolished, the common schools will hereafter be supported from the following sources :

1. The income of the common school fund ;
2. The amount that the Legislature may annually set apart from the income of the United States deposit fund ;
3. The general State tax ;
4. District, village and city taxation ;
5. The income of local funds.

(1.) The revenue of the common school fund is about \$170,000 a year. The distribution from it is at present \$155,000 yearly.

(2.) The appropriation from the income of the United States deposit fund is \$165,000 annually ; but it depends upon the Legislature, which may, at any time, divert the income to some other object.

(3.) The main dependence of the schools, so far as relates to the payment of teachers' wages, must be upon the State tax, which, being now fixed at one and a quarter mills upon each dollar of valuation, will probably yield about two millions of dollars a year. The income of the two funds is about one-fifteenth of the sum annually needed to pay teachers.

(4.) District, village and city taxation is voluntary, and the amount raised annually varies with the exigencies of the year. The purchase of sites, the building of school-houses, and the furnishing of them with seats, desks, chairs, stoves, fuel and apparatus are all done by local taxation. No money has ever been appropriated for these objects from the income of the State funds, or the avails of the State tax.

(5.) The income of local funds, chiefly gospel and school lands, was for the year 1867 \$26,009.24. It does not vary much from year to year.

Section 26 repeals all the provisions in special acts passed for cities and villages, and all local acts authorizing the collection of any money by rate bill. The schools must be free. Education in the State is gratuitous. There are to be henceforward no rate bills and no tuition bills, except the fees charged by trustees to non-resident pupils, and pupils under five and over twenty-one years of age, and which they may require to be prepaid. The only moneys heretofore "authorized by special acts to be collected by rate bill for the payment of teachers' wages," were the amounts due to teachers, after they had received the share apportioned to the district from the public moneys. After applying the public moneys, so far as they will go, to the pay-

ment of teachers' wages, the trustees will, hereafter, collect the residue by a district tax.

The inhabitants of a district, in the first instance, are authorized, at any meeting duly assembled, to vote the sums necessary for this purpose. In the absence of such vote, or on the refusal to pass such vote, the trustees are required to levy and collect the amount due the teacher by a district tax.

The twenty-seventh section of chapter 406, Laws of 1867, is as follows:

"§ 27. Nothing in this act contained shall be construed to authorize the common council of any city to increase the local city tax for the support of the schools therein, beyond the amounts they are now authorized by law to raise for local school purposes, and such local tax shall be reduced in such city by an amount equal to the amount it shall receive by the additional tax authorized by this act, for the support of schools, in the State generally."

The laws establishing schools in the cities, generally, if not in every case, limit the amount to be raised by tax in each year for their support. As the cities will receive their share of the common school and United States deposit funds, and their share of the increased State tax, the object of this section seems to be to reduce the local taxation of the city for the support of schools in a sum equal to the difference between what would have been the city's share of a State tax of three-fourths of a mill on the dollar of valuation, and its share of a tax of one and one-fourth of a mill on the dollar.

# GENERAL LAWS RELATING TO SCHOOLS

NOT INCLUDED IN THE CODE.

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## CHAP. 800.

AN ACT to provide for the Appraisal of, and acquiring Title to Lands taken for or in addition to Sites for District School-Houses.

Passed April 25, 1866; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Land for the site of a district school-house, or additional land adjoining to and for the enlargement of an established site, not exceeding one acre, may be acquired in cases where the owner or owners thereof, or some of them, shall not consent to sell the same for such purpose, or the trustee or trustees of the district cannot agree with such owner or owners, or some of them, upon the price or value thereof, as follows:

A petition shall be prepared for presentation to the county court of the county in which the land is situated, at some regular term thereof, signed by the trustee or trustees of the district, or a majority of them, setting forth that the inhabitants of the district have designated or desire to obtain the land for the site of a district school-house, or in addition to and for the enlargement of that already established as such site, describing such land by its locality and by particular metes and bounds, stating the quantity thereof as nearly as may be, with the name or names, and place or places of residence of the owner or owners, and that the consent of such owner or owners, or some of them, to sell such land for said purpose, cannot be obtained, or that the trustee or trustees cannot agree with him or them, or some of them, upon a reasonable price therefor, and praying for the appointment of commissioners to appraise the same.

Said petition shall be filed in the office of the county clerk of the county in which the land is situated, and at the time of filing

thereof, or at any time afterward, the petitioners may cause a notice of the pendency of the proceeding to be filed in said office, which notice the county clerk shall file and record in the same manner that similar notices in actions in the supreme court are required to be filed and recorded; which notice shall state the object of the proceeding, and contain a description of the land and the names of the parties affected thereby. And all persons who shall acquire, in whatsoever way, any title to, interest in, lien or incumbrance upon, said land, after the filing of the notice of the pendency of the proceedings as aforesaid, shall be bound and affected by said proceedings in the same manner and to the same extent as if they had been named in the petition as parties thereto; and said persons shall also be bound in the same manner and to the same extent, by notice of the existence of said proceeding, whether notice of the pendency thereof has been filed or not. The petitioners may appear and prosecute such proceedings by an attorney.

A copy of said petition, with a notice thereto annexed of the time and place when and where the same will be presented to said county court, addressed to the owner or owners of the required lands, shall be served in all cases, except as hereinafter allowed, as follows: Upon each person to whom the notice is addressed, who resides in the county in which the land is situated, by delivering to each such person, or, in case of his absence, by leaving at his dwelling-house or usual place of abode or business, such copy and notice, at least thirty days before the day specified in the notice for the presentation of the petition. Upon each such person who shall reside out of such county, by depositing such copy and notice in one of the post-offices nearest to said land, directed to such person at his reputed place of residence, and paying the proper postage thereon, at least forty days before the day specified in the notice for the presentation of the petition, if such place of residence be within this State, and at least sixty days before that day if such place of residence be out of this State, except that if such place of residence be in the upper peninsula of Michigan, or in any State or territory of the United States west of the Mississippi river, except the States of Iowa, Missouri, Arkansas and Louisiana, or any place out of the jurisdiction of the United States, then at least four months before such specified day of presentation.

If any such owner or owners shall reside out of the State, and shall have an agent or attorney residing therein, authorized to convey or contract for the sale of his or their interest in said lands, who shall not consent, or with whom the trustee or trustees cannot agree as aforesaid, then and in that case the service of the copy of petition and of notice aforesaid may be made upon such agent or attorney instead of upon such owner or owners, either personally or by depositing the same in a post-office as aforesaid, directed to such agent or attorney at his place of residence, and paying postage as aforesaid, the same number of days or months before the said specified day for the presentation of the petition, as if the service were upon such owner or owners, as hereinbefore required. If any such owner shall be an infant under the age of twenty-one years, such service shall be made on his general guardian; if there be no such guardian, on the infant, if over fourteen years of age, and if under that age, on the person with whom such infant shall reside, in each case in the same mode, and the same number of days or months before the specified day for the presentation of the petition, as if the service were upon an adult owner, according to the place of residence of such guardian, infant, or person with whom such infant resides, upon whom service is made. If any such owner shall be an idiot, or of unsound mind, service shall be made upon the committee of his person or estate; or, if there be no such committee, then upon the person who shall have the care of such idiot or person of unsound mind, in the same mode and the same number of days before presentation of the petition as in other cases. In all other cases service of copies of the petition, of notices, appointments of guardians or committees, orders or other papers in the proceedings under this act, or in connection therewith, shall be made as the court in which the proceedings are had shall direct. (*As amended by chapter 819, Laws of 1867, page 2067, volume 2.*)

§ 2. On presenting such petition to the county court aforesaid, on the day specified for its presentation as aforesaid, with proof of service of a copy or copies thereof and notice, and of other papers as hereinbefore required, all persons whose estate or interest are to be affected by the proposed proceedings, relative to the land described in the petition, may appear in person or by attorney, or other proper representative, before the said court, and

show cause against granting the prayer of the petitioners. The said court shall hear the proofs and allegations of the parties, and if no sufficient cause be shown against granting the prayer of the petitioners, shall make an order appointing three disinterested and suitable persons, residing in the same county, neither of whom shall be an inhabitant of the school district named in the petition, or interested in any taxable property therein, or who shall be within two degrees of relationship, by blood or marriage, to any owner of such taxable property, or to any owner of the land described in such petition, as commissioners to appraise the said land and to award the compensation to be made to the owner or owners thereof for the same, for the purposes specified in said petition; and the said court shall specify and appoint in such order the time and place within said school district for the first meeting of said commissioners, and also the time and place when and where said county court will receive the report of said commissioners of their proceedings and award in the premises, for confirmation.

§ 3. The said commissioners, before entering upon their duties, shall be sworn before some officer authorized to administer oaths, that they will fairly and impartially view the land in question, hear the proofs and allegations of the parties interested, and make a just and reasonable award of the compensation to be paid by the school district for the said land, to be appropriated for a site or part of a site for a district school-house. The said commissioners shall have power to issue subpoenas and administer oaths to witnesses, and a majority of them may adjourn the proceedings from time to time if necessary. They shall also view the land in question, hear the proofs and allegations of parties, reduce the testimony given, if any, to writing; and, without unnecessary delay, they, or a majority of them, shall appraise the said land and determine and award the compensation which ought to be made therefor by said school district, to the party or parties owning the same. They shall make a written report of their proceedings and award in the case, signed by them, or a majority of them, which shall be accompanied by the minutes of the testimony taken by them, and shall deliver the same to the county judge of the county on or before the day named in the order appointing them, for receiving such report for confirmation. The said commissioners shall be entitled



to two dollars per day for their services, which shall be a charge upon and be paid by the school district in whose behalf the land in question has been appraised by them as aforesaid.

§ 4. On the day and at the time and place appointed in the order aforesaid for receiving such report, the county court aforesaid, on being satisfied of the regularity and fairness of the previous proceedings, shall make an order reciting the proceedings, giving a description of the land appraised, confirming the report and directing to whom the compensation awarded shall be paid, or where and with whom the same shall be deposited. A certified copy of the last mentioned order shall, without unnecessary delay, be delivered by the judge holding said county court to the trustee or trustees aforesaid, or to one of them, whose duty it shall be forthwith to cause the same to be recorded at the expense of the said school district, in the office of the county clerk of the county in which the land therein described is situated. The trustee or trustees are hereby authorized and directed, on the filing of said order with the county clerk as aforesaid, forthwith to levy a district tax for a sum sufficient to pay the compensation named in said award and the expense of recording said order.

§ 5. Upon said order being recorded as aforesaid, and upon the payment or deposit of the amount of compensation awarded for said land, all the right, title and interest of the owner and owners aforesaid, in and to the said land, shall vest in the school district in whose behalf the proceedings aforesaid were instituted; and the trustee or trustees of such district shall be entitled to enter upon, take possession of, occupy and use said land for the purpose set forth in their petition aforesaid; and all land acquired by any school district, pursuant to the provisions of this act, shall be deemed to be taken for public use.

§ 6. The proceeds of every such award shall be divided amongst the parties whose rights and interests shall have been sold, in proportion to their respective rights in the premises; and the share of such of the parties as are of full age shall be paid to them or their legal representatives by the commissioners, or shall be brought into court for their use.

§ 7. When any of such known parties are infants, the court may, in its discretion, direct the share of such infants to be paid over to the general guardian on proper security being filed, or to

be invested in permanent securities at interest, in the name and for the benefit of such infants, or be deposited in some trust company or savings bank to abide the further order of the court.

§ 8. When any of the parties whose interests have been sold are absent from the State, or are not known or named in the proceedings, the court shall direct the shares of such parties to be invested in permanent securities at interest, or to be deposited in some trust company or savings bank to abide the further order of the court, for the benefit of such parties, until claimed by them or their legal representatives.

§ 9. When the proceeds of a sale belonging to any tenant in dower, or by the curtesy, or for life, shall be brought into court as hereinbefore directed, the court shall direct the same to be invested in permanent securities at interest, so that such interest shall annually be paid to the parties entitled to such estate during their lives respectively, unless such parties shall elect to accept a sum in gross in lieu thereof.

§ 10. The court may, in its discretion, require all or any of the parties, before they shall receive any share of the moneys arising from such sale, to give security to the satisfaction of such court to refund the said shares with interest thereon, in case it shall thereafter appear that such party was not entitled thereto.

§ 11. The amounts of all commissioners' fees, and of all expenses incurred by or in behalf of any school district, in pursuance of the provisions of this act, shall be a charge upon such district, and be levied and collected by tax in the same manner as other district taxes are levied and collected therein.

§ 12. This act shall not apply to cities; nor shall it be lawful under this act to acquire title to any garden or orchard, or any part thereof, without the consent of the owner, nor to any part of any yard or inclosure necessary to the use and enjoyment of buildings or any fixtures or erections for the purposes of trade or manufactures, without the consent of such owner.

§ 13. This act shall take effect immediately.

Chap. 819, Laws of 1867, sections 2 and 3, refers to and amends this law, and provides as follows :

§ 2. The act hereby amended shall apply to union free school districts and to districts organized under special laws; and the

trustees of such districts, or the boards of education organized under special laws, shall be and are hereby clothed with all the powers vested in trustees under said act.

§ 3. Nothing in this act contained shall prejudice or impair any right acquired or proceeding had or instituted, under or by virtue of the act hereby amended.

Domain is the right to dispose of a thing which belongs to us.

Eminent domain is the right which the people or government retain over the estates of individuals to resume the same for public use. (*Bouvier's Law Dictionary*.)

The word *domain* is derived from the Latin *dominium*, which signifies dominion, power. The word *eminent* is derived from the Latin *emineo*, and signifies high. The words "eminent domain," therefore, mean the highest authority or ultimate power. All governments have exercised this power. In despotic countries it is unlimited. Even in England—a constitutional monarchy—the Parliament may take private property for public use without compensation.

A brief history of the changes in the tenure of land, and a few definitions, will aid in understanding this provision of law, and the clauses of the Constitution by which it is authorized.

Prior to the year 1000, the feudal tenure of land, called the feudal system, was hardly known in Europe. The word "feud" is found in very few manuscripts earlier than that date. The territory of Europe during the preceding six hundred years had passed out of the Roman power and been divided and parceled among the children and descendants of Charlemagne, or had become the property of the various barbarian hordes that had successively pressed upon each other and overrun the land. About the tenth century the Franks had possession of France and the Normans of Normandy; the Teutonic nations held Germany and laid claim to Italy. We learn from ancient manuscripts and from the historians of the middle ages, that the proprietors of the soil in Germany and France were numerous and independent, and were the absolute owners. The introduction of the feudal system changed the whole face of things. It was a system of landholding. The great landholder had dominion over a certain extent of country. He granted to others the possession of subdivisions of his domain on condition that the grantee should swear fealty and hold himself in readiness at all times to do military service for his lord. During the two hundred years from 900 to 1100, the tenure of nearly all the land in Europe had become feudal. The allodial proprietors had been conquered and reduced to feudal subjection, or had, for protection and safety of person and property, voluntarily sworn fealty to some mighty lord. There is evidence that the feudal system had been introduced into some parts of England prior to the Norman conquest. William the Conqueror proceeded to establish it, and give it a form and stability which clothed him and his successors with greater wealth and power than was possessed by any other monarchs of their time. He divided England into sixty thousand parcels, that

were all surveyed, named and described in a book called Domesday book, which was a surveyor's field book and an appraisal. The name was derived from the Latin word *domus*, a house. These parcels were erected into manors and lordships, and such as William did not retain as his own were granted to the retainers and adventurers who composed his army, as a reward for their services. A few of the Saxon proprietors were confirmed in their possessions; but William required all the men, Saxon or Norman, to whom he granted or confirmed land, to swear fealty to him, to become his tenants, to acknowledge him as their superior and to become his vassals, ready to do him military service, and to obey promptly his summons to the field. England was his domain, and since his day the laws of England have recognized the king as the ultimate owner of all the land in the kingdom. William was a very wise and politic prince; he had experienced the dangers which threatened all feudal sovereigns from the wealth, ambition and power of their vassals. He was himself, for his fief of Normandy, a vassal of the king of France. He guarded his authority and supremacy by the subdivision of the kingdom into comparatively small estates. He created many fiefs, but made few rich feudatories. He gave to a few favorites hundreds of manors, but they were situated in many different counties. The owners of estates so divided, so far apart, and whose retainers could not be summoned and assembled speedily, could never be very formidable to the king.

In France the case was different. The great feudal lords were, in many instances, equal to the king in wealth, and their domains were not held by royal grant. In some instances, the domain of the feudal vassal was so large that he became a rival of the king. The dukes of Normandy, after they became kings of England, came also into possession, by marriage and inheritance, of the duchies of Guienne, Poitiers and Aquitaine, and their power was such that they disputed in the field for the throne of France. The word domain was used to express both the extent of their territory and their dominion over it. The feudal system in France and Germany reduced the peasantry to the most miserable condition of poverty and servitude. In process of time the power of the feudal lords was absorbed in the various monarchies. The kings of France and Prussia became absolute. The larger part of Germany became the property of the two houses of Brandenburg and Hapsburg, whose jealousy and rivalry however, permitted the establishment of thirty or more free cities, petty principalities and dukedoms.

It is a curious historical fact, that a few of the ancient allodial estates resisted the encroachments of feudal power, and were still in existence even down to the time of the French revolution. But the wars and political revolutions of the last century have left nothing of the feudal system, except a legal vocabulary and the legal fiction which acknowledges the ultimate property of the nation, by right of its sovereignty, in the whole territory within its limits. In France, the laws now permit every person to become the owner of land, and favor its division and distribution; so that the number of proprietors is nearly six millions, of whom five millions own on an average between three and seven and a half acres. In a large part of Germany, also, within the last seventy-five

years, the right of owning land has been granted to the peasants. In Switzerland, which was formerly most intensely feudal and aristocratic, the laws have recently abolished all aristocratic privileges and distinctions. Of the 485,000 heads of families, it is said that 465,000 possess landed property, and it is calculated that of the 2,534,242 inhabitants of Switzerland, there are but 500,000 having no landed possession; and yet 30 per cent of the country is uncultivated, or occupied by water, rocks and glaciers.

According to the census of 1861, the soil of the kingdom of Prussia is divided between 2,141,486 land owners—*Grundbesitzer*—divided very unequally among the various provinces. More than half of the proprietors own less than five morgen, or about three and a half acres. The whole population was 18,497,458, of whom eight millions and a half were engaged in agriculture, as their sole or chief occupation. Of these, 2,070,157 are proprietors, possessing from three acres to four hundred acres and more. The owners of three acres and less number 1,052,126; those from three to eighteen acres are 518,134; from 18 to 160 acres 387,741; from 160 to 400 acres 17,675; and above 400 acres 14,481. As a rule, the least populous provinces contain the largest estates. The land is said to be passing from the nobility to the middle classes. This change is due to the abolition of serfdom and the right of the peasants to become the owners of land.

If we turn to the two duchies of Mecklenburg, we shall see a different state of things. The population of Mecklenburg-Schwerin is 548,449, and they are nearly all serfs, who neither own land nor property of any kind. Of the soil of the duchy, 4,834 square miles, the duke owns one-fifth, the nobility, who number 624, own seven-tenths, and the remaining tenth is owned by various corporations and monastic institutions for Protestant noble ladies. In May, 1864, a bill passed the parliament giving the landed proprietors power to condemn the laborers on their estates, for simple "neglect of service," to a week's imprisonment and "twenty-five blows with a stick." It is not strange that the emigrants from this duchy to America number nearly ten thousand a year. Of the other duchy, Mecklenburg-Strelitz, containing 997 square miles, 527 square miles belong to the grand duke, 353 to the nobility, and 117 to the town corporations.

In England, at the conquest (1066), the population was about 1,500,000. In Domesday book, the number of persons recorded is 283,242, which, Mr. Hallam thinks, allowing for women and children, may be roundly called 1,000,000. When the great survey was taken, there were within the realm 45,706 landholders; namely, 1,400 *tenants in capiti* (including ecclesiastical corporations), 7,871 *under tenants*, 23,071 *Sockmanni*, and 13,364 *liberi homines*. At the revolution of 1688, Gregory King estimated the population of England at 5,500,000, of whom 170,000 were land owners. At the census of 1861, the population of England was 20,066,224, and the landed proprietors are stated at only 30,766. If we add to this number 5,000, to make up for mistakes, the astonishing fact still appears, that the land owners in England are 10,000 less than they were 800 years ago, and 135,000 less than they were 200 years ago. In 1066 the land holders composed about one in twenty-five of the popula-

tion; in 1688, about one in thirty-two, and in 1861 about one in five hundred.

Ralph Waldo Emerson, in his book, "English Traits," says: "The Marquis of Breadalbane rides out of his house a hundred miles in a straight line to the sea on his own property. The Duke of Sutherland owns the county of Sutherland, stretching across Scotland from sea to sea. The Duke of Devonshire, besides his other estates, owns 96,000 acres in the county of Derby. The Duke of Richmond has 40,000 acres at Goodwood, and 300,000 at Gordon Castle. The Duke of Norfolk's park, in Sussex, is fifteen miles in circuit. The large domains are growing larger. In 1786 the soil of England was owned by 250,000 corporations and proprietors, and in 1822 by 20,000. Of the 20,066,224 population, less than one-tenth, 1,924,110, are agriculturists. Even the farms held by tenants are decreasing in number, the smaller being yearly absorbed in the larger."

A recent English writer, Mr. Laing, writing in 1849, says: "In Holland, Flanders, Friesland, about the estuaries of the Scheldt, Maese, Rhine, Ems, Weser, Elbe and Eyder, in a great part of Westphalia, and other districts of Germany, in Denmark, Sweden and Norway, and in the south of Europe, in Switzerland, the Tyrol, Lombardy and Tuscany, the peasants have, from very early times, been the proprietors of a great portion of the land. France and Prussia have, in our own times, been added to the countries in which the land is divided into small estates of working peasant proprietors. In every country of Europe, under whatever form of government, however remotely or indirectly affected by the wars and convulsions of the French revolution, and however little the laws and institutions of the government may as yet be in accordance with this social condition of the people, the tendency during this century has been to the division and distribution of the land into small estates of a working peasant proprietary, not to its aggregation into large estates of a nobility and gentry. This has been the real revolution in Europe. The only exception is Great Britain. The tendency with us during the present century has been directly the reverse. It has been to aggregate small estates into large, and in Scotland and in a great part of England, to aggregate small tenant occupancies into large farms."

Mr. Maine, in his work entitled "Ancient Law," says: "The kingship of our Anglo-Saxon regal houses was midway between the chieftainship of a tribe and a territorial supremacy, but the superiority of the Norman monarchs, imitated from that of France, was distinctly a territorial sovereignty. Every subsequent dominion which was established or consolidated was formed on the later model. Spain, Naples and the Principalities, founded on the ruins of municipal freedom in Italy, were all under rulers whose sovereignty was territorial."

In England, the whole fabric of the feudal system was reared upon the principle that the national territory was the property of the State. The boast of Louis XIV, "*L'Etat, c'est moi*," might have been made with the most exact truth by the conqueror and his immediate successors. The system in England was this: In the crown resided the *dominum directum* over all the soil of the

country, and from it alone could the *dominum utile* be derived. (*See Reeves' History of English Law, volume 1, page 37.*) The division of the land was into three parts—first, the crown lands; secondly, the fiefs granted on condition of the render of military or other services and the payments of rents; and, thirdly, the estates of the church, also held for appropriate considerations. To these, in the almost endless subdivision of subinfeudation, there were tenants from the honorable position of knights and freeman down to the servile cultivators and *adscripti glebæ*. But the land, although in the occupation of individuals, was always recognized as the property of the State, and, as its representative and the source of law and administration, the king was lord paramount over all his dominions.

Such is the law of England, and such was the law in this State until 1776 and 1787, when some modifications were made by our statutes. The common law of England was declared to be the law of this State, except so far as it should be changed by statute. Two great changes have entirely abolished the feudal system and the laws of primogeniture. The statute of 1787 declared all lands in the State to be allodial. This word is thus defined in Gregory's Dictionary: ALLODIAL, an epithet given to an inheritance without any acknowledgment to a lord or superior; in opposition to *feudal*. *Allodial* lands are free lands, for which neither fees, rents nor services are due.\*

\* ALLODIAL.—*Allodium*, in Middle Age Latin, was an estate held in absolute possession without a feudal superior. (*Blackstone.*) The derivation has been much disputed, and little light has been thrown upon it by the various guesses of antiquarians. The word appears as early as the ninth century, under the forms *alodis*, *alodus*, *alodium*, *alaudam*; and, in French, *aleu*, *aleu-franc*, *franc-aloud*, *franc-aloi*, *franc-aleuf*. The general sense is that of an estate held in absolute possession.

"Meæ prædium possessionis hereditariæ, hoc est, *alodium* nostrum qui est in pago Andigavensi." (*A deed of the year 839, in Ducange.*) Translated it is: "A farm in my hereditary possession, that is, my *alodium* which is in the Andigavensian country."

"*Alaudum* meum sive hereditatem quam dedit mihi pater meus in die nuptiarum mearum." "My *alodium*, or the inheritance that my father bestowed upon me on the day of my marriage."

"Paternæ hæreditatæ, quam nostrates *alodium* vel patrimonium vocant, sese contulit." "He betook himself to his paternal estate which our people call *alodium*, or patrimony."

It is often opposed to a fief. "*Hæc autem fuerunt ea—quæ de allodiis sive prædiis in feudum commutavit Adela.*" "These were the same lands which Adela changed from *allodial* or free lands into feudal lands."

It is taken for an estate free from duties. "*Habemus vineæ agripennum unum allodialiter immunem, hoc est ab omni census et vicariæ retributione liberum.*" "We have one little vineyard *allodially* exempt, that is, free from every kind of public tax or charge."

"Reddit ea terra 2 den. census cum ante semper *alodium* fuisset." "This land, which was always heretofore *allodial*, is now registered for a tax of two denarii."

It can hardly be wholly distinct from Icelandic *odal*, which is used in much the same sense: "*Allodium, prædium hereditarium; an inheritable farm:*" "*odals-jord, prædium hereditarium; odal-borinn, natus ad heredium avitum; born to an ancestral estate; that is, one in the direct line from the first owner:*" "*odals-madr, dominus allodialis, stricte primus occupans; an allodial lord, strictly the first occupant.*"

Danish and Swedish, *odel*, a patrimonial estate. The landed proprietors of the Shetland islands are still called *udallers*, according to Sir Walter Scott. The Icelandic *odal* is also

But although the tenure of land was changed from *feudal* to *allodial*, the ultimate property was still declared to be in the people. It follows, therefore, that every owner of land in the State is the tenant of the people, and holds his title subject to the paramount right of the people.

The logical consequence of this territorial sovereignty of the people, or the State, is thus expressed by John Stuart Mill, in his "Principles of Political Economy," volume 1, page 285 :

"Landed property is felt, even by those most tenacious of its rights, to be a different thing from other property ; and when the bulk of the community have been disinherited of their share of it, and it has become the exclusive attribute of a small minority, men have generally tried to reconcile it to their sense of justice by endeavoring to attach duties to it, and erecting it into a sort of magistracy, either moral or legal. But if the State is at liberty to treat the possessors of land as public functionaries, it is only going one step further to say that it is at liberty to discard them. The claim of the land owners to the land is altogether subordinate to the general policy of the State. The principle of property gives them no right to the lands, but only a right to compensation for whatever portion of their interest in the land it may be the policy of the State to deprive them of."

In feudal times the king in England, or the chief lord, could resume his land at his pleasure, and the corollary here drawn by Mr. Mill, from the feudal law, is now established in constitutional practice.

Our Constitution, article 1, section 6, declares that private property shall not be taken for public use without just compensation. The clause was borrowed from the fifth article of the amendments of the United States Constitution, proposed at the First Congress, 1789, and approved by the Legislatures of three-fourths of the States.

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used in the sense of abandoned goods : "*at leggja fyrer odal* ; to abandon a thing ; to leave it to be taken by the first occupier."

If the Middle Latin *alodis*, *alodum*, is identical with the Icelandic word, it exhibits a singular transposition of syllables. Itre would account for *allodium* from the compound "*alldha odhol*" mentioned in the Gothic laws, an ancient inheritance, from *aldrætas*, antiquitas, and *odal*, inheritance, as *allda-vinr*, an ancient friend ; *alder-hæfd*, a possession of long standing.

Itre supposes the root of *odal* to be *od*, and, primarily meaning possession ; and this is confirmed by the legal signification of the word, which, in strictness, is a prescriptive title acquired by thirty years continuous possession. It was also the highest title known in Scandinavian jurisprudence, and the domain of the crown was said to be held by it. Examples of its use in this latter sense will be found in *Harold's Saga* and *Harfagra*, c. vi. ; in the *Heimskunгла*, and in the *Saga Olafs Tryggvasonar*, c. 13, 97.

"The writers on this subject define *allodium* to be every man's own land, which he possesseth merely in his own right, without owing any rent or service to any superior." (*Blackstone*.)

"This *allodial* property no subject in England has, it being a received, and now an undeniable, principle in law, that all the lands in England are holden mediately or immediately of the king." (*Blackstone*.)

"*Allodium* is a law word contrary to *feudum*, and it signifies land that holds of nobody. We have no such land in England. 'Tis a true proposition, all land in England is held, mediately or immediately, of the king." (*Selden's Table Talk*.)

The word has also been derived from *all* and *odh*, meaning *all property*, or whole estate. This is a very plausible etymology. "All" and "whole" are the same word differently spelt.



How it may be taken is pointed out in section seven: "When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road, and the amount of all damage to be sustained by the opening thereof, shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person benefited."

Section eleven, of article first, asserts the dominion of the State over land as follows: "The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail, from a defect of heirs, shall revert or escheat to the people."

The tenure of land in this State is declared in sections twelve and thirteen of article first:

§ 12. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving, however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

§ 13. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

The words of the Constitution are nearly the same as the words of the Revised Statutes, which took effect January 1, 1830, section 2, title 1, chapter 1, part 2.

§ 2. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates; and all feudal tenures of every description, with all their incidents, are abolished.

§ 3. The abolition of tenures shall not take away, or discharge, any rents or services certain, which at any time heretofore have been, or hereafter may be, created or reserved; nor shall it be construed to affect or change the powers or jurisdiction of any court of justice in this State.

The language of these two sections is substantially borrowed from the act concerning tenures, passed February 20, 1787, section six: "And be it further enacted by the authority aforesaid, that the tenure upon all gifts, grants and conveyances heretofore made, or hereafter to be made, of any manors, lands, tenements, or hereditaments, of any estate of inheritance, by any letters patent under the great seal of this State, or in any other manner, by the people of this State, or by the commissioners of forfeitures, shall be and remain *allodial*, and not *feudal*, and shall forever be taken and adjudged to be and continue in free and pure *allodium* only; and shall be forever discharged of all *wardship*, *value* and *forfeiture of marriage*, *livery*, *primer seisin*, *ousterlemain*, *relief*, *aid pur file marrier*, *aid pur fair fitz chivalier*, *rents*, *renderz*, *fealty*, and all other services whatsoever; any law, statute, reservation, custom or usage to the contrary hereof in anywise notwithstanding."

It is left to the Legislature to determine the necessity of taking private property. If a fort or an arsenal is to be built, if a turnpike or canal or railroad is to be made, if a street or alley is to be laid out, if a capitol or court-house is to be erected, if a school-house site is wanted, or if a private road is demanded, the rights of private persons are made subservient to those of the community at large, and as much land is seized and confiscated as may be considered necessary for the object in view, with or without the consent of the owner, whilst he is not permitted to fix his own price. If the State take it, the compensation is fixed by the Legislature. If a railroad, or any public corporation take it, the price is fixed by a jury, or by commissioners appointed by a court of record. A jury of freeholders assesses the damage of laying out a private road.

The manner in which lawyers soften down or gloss over the exercise of this right may be seen by the following extract from *Mr. Sergeant Stephen's Blackstone*, volume 1, page 166, fourth edition :

"No unnecessary violation of the rights of property is in any instance allowed by our law. If a new road, for example, is to be made through the grounds of a private person, in a case where it would be extensively beneficial to the public, the Legislature never permits itself to do this without the consent of the owner of the land, *or at least without securing to him a complete indemnification*. In vain may it be urged that the good of the individual ought to yield to that of the community. The true principle applicable to all such cases is one to which we have had occasion already to refer, and which is constantly borne in mind by the law, viz., that the private interest of the individual is never to be sacrificed to a *greater extent* than is necessary to secure a *public benefit of adequate importance*. The public, therefore, in all such transactions, is considered as an individual treating with an individual for an exchange. *All the Legislature does is to oblige the owner to alienate his possession for a reasonable price.*"

The last sentence is not quite consistent with the preceding one, for if one individual desired to exchange properties with his neighbor, or to take his neighbor's farm for a sum of money, it may be reasonably doubted whether the exchange could be effected by giving a reasonable price to be fixed by himself. But this is just what the State does in all such cases.

The courts have defined this power of "eminent domain" in language rather more positive than that employed by Sergeant Stephen.

The Parliament of Great Britain possesses the power of taking private property for public uses without compensation. Every government has this power, and may exercise it under such restraints and limitations as may be fixed by its Constitution and laws. (*The Governor, etc., of Cast Plate Manufacturing Company v. Meredith*, 4 Term Reports, 764.)

Our people and the framers of our laws understood perfectly the extent of this power, and therefore, to guard against the abuse of it, the provision prohibiting the taking of private property without compensation was inserted in the Constitutions of New Hampshire, Massachusetts, New York, and several other States. This prohibition was not contained in the Constitution of South Carolina, and, accordingly, it has been held that the State may take private property for public use without compensation. The Legislature of a State, unless restricted by the State Constitution, would even have power to take

private property for private use. (*Stark v. McGovern*, 1 *Nott & McCord's* [*South Carolina*] *Reports*, 387.)

The eminent domain remains in the government, or in the aggregate body of the people in their sovereign capacity; and they can resume the possession of private property, not only when the safety, but also when the interest, or even the convenience of the State is concerned; as when the land is wanted for a road, canal, or other public improvement.

The only restriction upon the power of the people to resume the possession of property for the purpose of an internal improvement, in which the public or the inhabitants of any particular section of the State, as citizens merely, have an interest, is, that the property cannot be taken for such public use without just compensation to the owner and in the mode prescribed by law.

It belongs to the Legislature to determine whether the benefit to the public from such improvement is of sufficient importance to justify their exercise of the right of eminent domain, in thus interfering with the private rights of individuals.

In cases of public improvements, from which a benefit would result to the public, this right of eminent domain may be exercised directly by the agents of the government, or through the medium of corporate bodies, or by means of individual enterprise. (*Beekman v. Saratoga and Schenectady Railroad Company*, 3 *Paige's Chancery Reports*, page 45.)

The power to take private property has been granted by the Legislature for the construction of public highways, turnpikes, bridges, ferries, canals, plank-roads and railroads. It has been given to cities and towns and villages, for making streets, alleys and sewers, and to private persons for the purpose of making private roads. A like power has been granted to the owners of mill-sites, to flow the lands upon a stream for the accumulation of water necessary to turn the water-wheels of a mill. The same power has been exercised in the laws that have authorized the draining of swamps and marshes, and the assessment of the expense upon the owners of the lands benefited by the improvement. The taking of land and the occupation of streets for aqueducts, to bring water to cities and villages, are authorized by the same power. Gas companies for lighting the streets and public buildings have the same right, and now the Legislature has authorized the taking of land for school-house sites. (*Laws of 1772*; *Kent and Rad. Ed. Laws*, volume 2, page 49, section 3; *Act of April 18, 1825. Draining marshes of the Seneca river, Laws of 1818*, page 115; chapter 25, *Laws of 1807*; *Laws of 1826*, page 247; 2d *Ed. R. S.*, page 548; 1 *John. Ch. R.*, 143.)

Herbert Spencer, in his "Social Statics," page 119, in an imaginary conversation between himself and an American squatter, puts the following case in illustration of this power:

"Suppose now that in the course of your wanderings you come upon an empty house, which, in spite of its dilapidated state, takes your fancy; suppose that with the intention of making it your abode you expend much time and trouble in repairing it; that you paint, and paper, and whitewash, and at considerable cost bring it into a habitable state; suppose further, that on some fatal day a stranger is announced who turns out to be the heir to whom this house has been bequeathed, and that this professed heir is prepared with all

the necessary proof of his identity, what becomes of your improvements? Do they give you a valid title to the house? Do they quash the title of the original claimant? No. Neither, then, do your pioneering operations give you a valid title to this land; neither do they quash the title of its original claimants—the human race. The world is God's bequest to mankind. All men are joint heirs to it; you amongst the number. And because you have taken up your residence on a certain part of it, and have subdued, cultivated and beautified that part (improved, as you say), you are not therefore warranted in appropriating it entirely as your private property. At any rate, if you do, you may at any moment be justly expelled by the lawful owner—society."

If society should exercise its lawful power, as individuals exercise the power given to them by the laws over their private estates, what results might not we expect?

The Duke of Sutherland ejected from his domain, the county of Sutherland, not many years ago, more than fifteen thousand persons, and turned their farms into sheep-walks. Other proprietors in the Highlands have done the same to make sheep-pastures, and reserves for the shooting of snipe and woodcock.

In Ireland the landlords, by ejectments and evictions, have dispossessed thousands and thousands of tenants, in order that the small holdings might be absorbed in large farms.

The Irish and Scotch, as many as can find means to cross the ocean, have come to America, and thousands more, driven from their homes, to make room for cattle and sheep, hounds and hunters, because it is for the real or fancied interest of the landlords, have crowded into the manufacturing districts, or cities, of Scotland and England.

If the 30,000 land owners of England should take it into their heads to eject all tenants from their lands, what would they do more than has been done by the Scotch and English landlords? They would be simply exercising the power which the law has lodged in their hands. For every tenant who remains in possession after the expiration of the term of his lease, and against the will of his landlord, may be ejected by law. And persons who enter, without permission, another's land, are trespassers.

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## CHAP. 761.

AN ACT authorizing the Taxation of Stockholders of Banks, and the Surplus Funds of Savings Banks.

Passed April 23, 1866.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. No tax shall hereafter be assessed upon the capital of any bank or banking association organized under the authority of this State or of the United States, but the stockholders in such banks and banking associations shall be assessed and taxed on the

value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholder, in the assessment of taxes at the place, town or ward where such bank or banking association is located, and not elsewhere, whether the said stockholder reside in said place, town or ward, or not, but not at a greater rate than is assessed upon other moneyed capital in the hands of individuals in this State. And in making such assessment there shall also be deducted from the value of such shares such sum as is in the same proportion to such value as is the assessed value of the real estate of the bank or banking association, and in which any portion of their capital is invested, in which said shares are held, to the whole amount of the capital stock of said bank or banking association. And provided, further, that nothing herein contained shall be held or construed to exempt from taxation the real estate held or owned by any such bank or banking association; but the same shall be subject to State, county, municipal and other taxation, to the same extent and rate and in the same manner as other real estate is taxed.

§ 2. Every individual banker, doing banking business under the laws of this State, is hereby required to declare upon oath before the assessor the amount of capital invested in such banking business, and each one hundred dollars of such capital, for the purpose of this act, and for the purpose of taxation, shall be held and regarded as one individual share in such banking business, and such shares are hereby declared to be personal property. If such banker have partners, he shall declare upon oath before the assessor the number of shares held by each of them in such banking business, ascertained as above provided, and the shares so held by any partner shall be included in the valuation of his taxable property in the assessment of all taxes levied in the town, school district or ward where such individual banker is located, and not elsewhere; and such individual banker shall pay the same and make the amount so paid a charge in the accounts with such partners; and if such individual banker have no partners he shall be held to be sole owner of all the shares in such business of banking, and the same shall be included in the valuation of his personal property in the assessment of all taxes levied in the town, school district or ward where his bank is located, and not elsewhere.

§ 3. There shall be kept at all times in the office where the business of such bank or banking association, organized under the authority of this State or of the United States, shall be transacted, a full and correct list of the names and residences of all the stockholders therein, and of the number of shares held by each; and such list shall be subject to the inspection of the officers authorized to assess taxes during the business hours of each day in which business may be legally transacted.

§ 4. Sections ten and eleven of chapter ninety-seven of the Session Laws of eighteen hundred and sixty-five are hereby repealed.

§ 5. When the owner of stock in any bank or banking association, organized under the laws of this State or of the United States, shall not reside in the same place where the bank or banking association is located, the collector and county treasurer shall, respectively, have the same powers as to collecting the tax to be assessed by this act, as they have by statute, when the person assessed has removed from the town, ward or county in which the assessment was made; and the county treasurer, receiver of taxes, or other officers authorized to receive said tax from the collector, may, all or either of them, have an action to collect the tax from the avails of the sale of his shares of stock, and the tax on the share or shares of said stock shall be and remain a lien thereon till the payment of said tax.

§ 6. For the purpose of collecting such taxes, and in addition to any other laws of this State, not in conflict with the Constitution of the United States, relative to the imposition of taxes, it shall be the duty of every such bank or banking association, and the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes assessed in pursuance of this act, until it shall be made to appear to such officers that such taxes have been paid.

§ 7. The privileges and franchises granted by the Legislature of the State to savings banks or institutions for savings, are hereby declared to be personal property, and liable to taxation as such in the town or ward where they are located, to an amount not exceeding the gross sum of their surplus earned, and in the possession of said banks or institutions; and the officers of such institutions or banks may be examined on oath, by assessors, as to the

amount of such surplus; and the property of such banks and institutions shall be liable to seizure and sale for the payment of all taxes assessed upon them for said privileges and franchises.

§ 8. This act shall take effect immediately.

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### CHAP. 889.

AN ACT providing for the Application of Moneys hereafter collected in the Metropolitan Excise District for Certain Fines and from Licenses for the Sale of Liquors.

Passed May 10, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. From and after the first day of May, one thousand eight hundred and sixty-seven, the treasurer of the Metropolitan board of excise shall pay over all sums received by him for licenses and fines as follows: All such sums as are received for licenses granted in the city of Brooklyn, and for fines imposed for offenses in said city, to the commissioners of the sinking fund of the city of Brooklyn, to be applied by them, without deduction, to the extinction of the debt of said city; all such sums as may be received from the towns in the county of Richmond to the commissioner of common schools in said county, to be by him apportioned among the several school districts in said county ratably in proportion to the number of scholars attending school in each, and applied for the maintenance of the schools and the erection and improvement of school buildings therein respectively; in the towns of Kings county, except the city of Brooklyn, to the commissioner of schools, the money received from each town to be apportioned by him among the several school districts in such town, in proportion to the number of scholars attending school in each district, and applied for school purposes; and in the towns of Queens county, to the highest officer having the general charge of schools in said county, to be by him distributed in like proportion among the towns from which it is received, and to be applied for like purposes. But before paying over such sums, the said treasurer shall deduct the proper proportion of the expenses of said board, and the ten per cent now provided by law to be paid

to the State inebriate asylum. He shall also deduct, from the sums received from Brooklyn, any sum now provided by law to be paid to the inebriates' home.

§ 2. This act shall take effect immediately.

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### CHAP. 261.

[*Laws of 1850, page 500.*]

AN ACT to provide for the Better Education of the Children in the Several Orphan Asylums in this State, other than in the City of New York.

Passed April 10, 1850.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The schools of the several incorporated orphan asylum societies in this State, other than those in the city of New York, shall participate in the distribution of the school moneys, in the same manner and to the same extent, in proportion to the number of children educated therein, as the common schools in their respective cities or districts.

§ 2. The schools of said societies shall be subject to the rules and regulations of the common schools in such cities or districts, but shall remain under the immediate management and direction of the said societies as heretofore.

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### CHAP. 78.

[*Laws of 1866, page 149, volume 1.*]

AN ACT in relation to the Security to be given by Supervisors of Towns.

Passed February 28, 1866.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. In addition to the bond or bonds that the supervisors of the several towns in this State are now by law required to execute, the supervisor of every town in this State, which has a local school fund belonging to said town, shall, before entering upon the duties of his office, execute a bond, with two or more



sufficient sureties, in double the amount of all school moneys, funds or securities belonging to such town, and which by law is under the control or in the custody of the supervisor of such town; such bond to be in accordance with the requirements of section twenty of chapter one hundred and seventy-nine, Laws of eighteen hundred and fifty-six, and subject to all the provisions thereof, except as herein specified.

Section 20, chapter 179, Laws of 1856, has been amended by section 31 of title III of the Laws of 1864. (*Ante*, p. 62.) It would seem that a separate bond for the security of the "moneys, funds and securities" belonging to the towns must be given.

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### CHAP. 38.

AN ACT to make the Town of Chester a Part of the Second School Commissioner's District of Orange County.

Passed February 15, 1867.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. The town of Chester, in Orange county, is hereby declared to be and shall form a part of the second school commissioner's district of said county, under the control and supervision of the school commissioner of said district.

§ 2. This act shall take effect immediately.

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### CHAP. 184.

AN ACT to make the Town of Cambria a Part of the First School Commissioner's District of Niagara county.

Passed March 28, 1867.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. The town of Cambria, in Niagara county, is hereby declared to be and shall form a part of the first school commissioner's district of said county, under the control and supervision of the school commissioner of said district.

§ 2. This act shall take effect immediately.

## CHAP. 531.

AN ACT to transfer the Town of Delhi from the First to the Second School Commissioner District of the County of Delaware.

Passed April 22, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. The town of Delhi of the county of Delaware is hereby transferred from the first to the second school commissioner district of the said county of Delaware.

§ 2. All official acts heretofore performed by the school commissioner of the said first district of the said county of Delaware shall be legal and valid, so far as affects the said town of Delhi, and to the same extent that they would have been had this transfer not been made, and no more; and, after the passage of this act, the school commissioner of the said second district shall exercise all lawful authority pertaining to his office over the said town of Delhi, without additional compensation therefor.

§ 3. This act shall take effect immediately.

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## CHAP. 185.

AN ACT to provide for the Care and Instruction of Idle and Truant Children.

Passed April 12, 1853.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. If any child, between the ages of five and fourteen years, having sufficient bodily health and mental capacity to attend the public schools, shall be found wandering in the streets or lanes of any city or incorporated village, idle and truant, without any lawful occupation, any justice of the peace, police magistrates, or justices of the district courts in the city of New York, on complaint thereof by any citizen on oath, shall cause such child to be brought before him for examination, and shall also cause the parent, guardian or master of such child, if he or she have any, to be notified to attend such examination. And if, on such examination, the complaint shall be satisfactorily established, such justice

shall require the parent, guardian or master to enter into an engagement in writing, to the corporate authorities of the city or village, that he will restrain such child from so wandering about, will keep him or her on his own premises, or in some lawful occupation, and will cause such child to be sent to some school, at least four months in each year, until he or she becomes fourteen years old. And such justice may, in his discretion, require security for the faithful performance of such engagement. If such child has no parent, guardian or master, or none can be found, or if such parent, guardian or master refuse or neglect, within a reasonable time, to enter into such engagement, and to give such security, if required, such justice shall, by warrant under his hand, commit such child to such place as shall be provided for his or her reception, as hereinafter directed.

§ 2. If such engagement be habitually or intentionally violated, an action may be brought thereon, by the overseers of the poor, or either of them, of such city or village, in the name of the corporate authorities thereof, and on proof of such habitual or intentional violation, the plaintiff shall recover therein a penalty of not more than fifty dollars, with costs. And thereupon the magistrate, or court before whom such recovery shall be had, shall, by warrant, commit such child to the place so provided for his or her reception; as aforesaid.

§ 3. The corporate authorities of every city and incorporated village shall provide some suitable place for the reception of every child that may be so committed, and for the employment of such child in some useful occupation, and his or her instruction in the elementary branches of an English education, and for his or her proper support and clothing. Every child so received shall be kept in such place until discharged by the overseers of the poor or the commissioners of the almshouse of such city or village, and may be bound out as an apprentice by them or either of them, with the consent of any justice of the peace, or any of the aldermen of the city, or any trustee of the incorporated village where he may be, in the same manner, for the same periods, and subject to the same provisions in all respects, as are contained in the first article and fourth title of the eighth chapter, and second part of the Revised Statutes, with respect to children whose parents have become chargeable on any city or town.

§ 4. The expenses of providing and maintaining such place for the reception, clothing, support and instruction of such children, shall be defrayed in the same manner as charges for the support of paupers chargeable upon such city or village; and the corporate authorities of every city and village shall certify to the board of supervisors of the county, at their annual meetings, the amount necessary for said purposes, which amount the said supervisor shall cause to be levied and collected as part of the taxes for the support of the poor, chargeable to such city or village.

§ 5. It shall be the duty of all police officers and constables, who shall find any child in the condition described in the first section of this act, to make complaint to a justice of the peace, as provided in the said section.

§ 6. The fees of justices, for services performed under this act, shall be the same as allowed by law in cases of vagrancy, and shall be paid by the city or village in which they were rendered.

§ 7. This act shall take effect immediately

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## CHAP. 311.

### AN ACT for the Establishment of a Normal School.

Passed May 7, 1844.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. The Treasurer shall pay on the warrant of the Comptroller, to the order of the Superintendent of Common Schools, from that portion of the avails of the literature fund appropriated by chapter two hundred and forty-one of the Laws of one thousand eight hundred and thirty-four, to the support of academical departments for the instruction of teachers of common schools, the sum of nine thousand six hundred dollars; which sum shall be expended under the direction of the Superintendent of Common Schools and the Regents of the University, in the establishment and support of a normal school for the instruction and practice of teachers of common schools in the science of education and in the art of teaching, to be located in the county of Albany.

§ 2. The sum of ten thousand dollars shall, after the present year, be annually paid by the Treasurer, on the warrant of the Comptroller, to the Superintendent of Common Schools, from the revenue of the literature fund, for the maintenance and support of the school so established, for five years, and until otherwise directed by law.

§ 3. The said school shall be under the supervision, management and government of the Superintendent of Common Schools and the Regents of the University. The said Superintendent and Regents shall, from time to time, make all needful rules and regulations, to fix the number and compensation of teachers and others to be employed therein; to prescribe the preliminary examination and the terms and conditions on which pupils shall be received and instructed therein; the number of pupils from the respective cities and counties, conforming as nearly as may be to the ratio of population; to fix the location of the said school, and the terms and conditions on which the grounds and buildings therefor shall be rented, if the same shall not be provided by the corporation of the city of Albany, and to provide in all things for the good government and management of the said school. They shall appoint a board, consisting of five persons, of whom the said Superintendent shall be one, who shall constitute an executive committee for the care, management and government of the said school under the rules and regulations prescribed as aforesaid, whose duty it shall be, from time to time, to make full and detailed reports to the State Superintendent and Regents, and among other things to recommend the rules and regulations which they deem necessary and proper for the said school.

§ 4. The Superintendent and Regents shall annually transmit to the Legislature a full account of their proceedings and expenditures of money under this act, together with a detailed report by said executive committee of the progress, condition and prospects of the school.

## CHAP. 318.

AN ACT for the Permanent Establishment of the Normal School.

Passed April 12, 1848; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The Treasurer shall pay, on the warrant of the Comptroller, to the order of the State Superintendent of Common Schools, from the general fund, a sum not exceeding fifteen thousand dollars, to be expended in the erection of a suitable building for the accommodation of the State normal school for the instruction and practice of teachers of common schools in the science of education and the art of teaching.

§ 2. The said building shall be erected, under the direction of the executive committee of the school, upon the ground owned by the State, and lying in the rear of the Geological rooms.

§ 3. The said school shall be, as heretofore, under the supervision, management and government of the State Superintendent of Common Schools and the Regents of the University. The said Superintendent and Regents shall, from time to time, make all needful rules and regulations to fix the number and compensation of teachers and others to be employed therein; to prescribe the preliminary examination and the terms and conditions on which pupils shall be received and instructed therein, the number of pupils from the respective counties conforming as nearly as may be to the ratio of population; and to provide in all things for the good government and management of the said school. They shall appoint a board consisting of five persons, of whom the said Superintendent shall be one, who shall constitute an executive committee for the care, management and government of said school, under the rules and regulations prescribed as aforesaid, whose duty it shall be, from time to time, to make full and detailed reports to the said Superintendent and Regents, and, among other things, to recommend the rules and regulations which they deem necessary and proper for the said school.

§ 4. The Superintendent and Regents shall annually transmit to the Legislature a full account of their proceedings, and of the expenditures of money under this and previous acts, together with a detailed report of the progress, condition and prospects of the school.

## CHAP. 418.

## AN ACT for the Support of a Training School for Primary Teachers.

Passed May 4, 1863 ; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. The Treasurer shall pay annually, for two years, on the warrant of the Comptroller, to the order of the Superintendent of Public Instruction, the sum of three thousand dollars for the support of a training school, in the city of Oswego, for the preparation of primary teachers for the common schools of this State ; provided that the citizens or the board of education in said city shall, within one year from the passage of this act, provide the necessary buildings, grounds, and other accommodations and appliances for such school, as directed by the Superintendent of Public Instruction ; and provided, further, that there shall be instructed in said school, for a period of at least forty weeks in each year, not less than fifty teachers designing to teach in the common schools of this State ; and provided, further, that each of the several Senatorial districts of this State shall respectively be entitled to send annually to said training school two first-class teachers, each to be appointed by the State Superintendent of Public Instruction, after they have been duly recommended by two county school commissioners or by a city superintendent of schools, residing in the district for which the appointment is to be made ; and all teachers thus appointed to said training school may receive instruction and training in every thing that is taught in said school, free of charge for tuition.

§ 2. The said school shall be subject to the supervision and general direction of the Superintendent of Public Instruction ; and the board of education of the city of Oswego and the secretary of said board shall constitute an executive committee for the immediate care, management and government of said school, with power to make all needful and proper rules and regulations concerning the same, subject to the approval of the Superintendent of Public Instruction.

§ 3. The executive committee, as above constituted, shall annually transmit to the Legislature, through the Superintendent of Public Instruction, a report of their transactions under this act,

including a statement in detail of the expenditure of all moneys, together with a statement of the progress and prospects of the school, which report shall first be approved by the Superintendent of Public Instruction.

§ 4. The first year of said school shall be deemed to commence on the day which the Superintendent of Public Instruction shall certify to the Comptroller as the day on which the requirements of the first section of this act, relative to providing the buildings and other appliances for the school, shall have been complied with.

§ 5. If less than fifty teachers are instructed in said school, as provided in the first section of this act, there shall be paid only a corresponding portion of the sum appropriated by this act.

§ 6. This act shall take effect immediately.

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## CHAP. 445.

AN ACT to amend "An Act for the Support of a Training School for Primary Teachers," passed May fourth, eighteen hundred and sixty-three.

Passed April 14, 1865; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. Section one of chapter four hundred and eighteen of the Laws of eighteen hundred and sixty-three, entitled "An act for the support of a training school for primary teachers," is hereby amended so as to read as follows :

§ 1. The Treasurer shall pay annually for two years, except as hereinafter provided, on the warrant of the Comptroller, to the order of the Superintendent of Public Instruction, the sum of six thousand dollars for the support of a normal school in the city of Oswego, for the preparation of teachers for the common schools in this State, provided that the citizens, or the board of education in said city, shall, within one year from the passage of this act, provide the necessary buildings, grounds and other accommodations for such school, as shall be directed by the Superintendent of Public Instruction; and provided, further, that each of the several counties shall respectively be entitled to send annually to said school as many pupil teachers as it has representatives in the



Assembly, each to be appointed by the Superintendent of Public Instruction, on the recommendation of the school commissioner or commissioners of such county, or on the recommendation of the city superintendent of schools and such commissioners (in counties in which there is a city), or on the recommendation of the city superintendent of schools of the city of New York. The times and places of selecting candidates for such recommendation shall be prescribed by the Superintendent of Public Instruction, and all pupil teachers thus recommended and appointed to said school shall receive instruction in all the branches which shall be taught therein free of charge for tuition.

§ 2. The fifth section of said act is hereby amended so as to read as follows:

§ 5. If the said school officers of any county shall fail to nominate candidates for admission to said school, or if candidates duly recommended and appointed shall fail to attend said school, then the said Superintendent may appoint pupil teachers of other counties to fill such vacancies, and such appointees shall be entitled to all the privileges of the school free of charge for tuition.

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## CHAP. 170.

AN ACT in regard to the Normal and Training School of the City of Oswego.

Passed March 27, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The normal school building, with the grounds and appurtenances in the city of Oswego, are hereby accepted as the necessary buildings, grounds and other accommodations within the requirements of the act passed April fourteenth, eighteen hundred and sixty-five, entitled "An act to amend an act for the support of a training school for primary teachers," passed May fourth, eighteen hundred and sixty-three. And the common council of the city of Oswego may, on or before the first day of May, eighteen hundred and sixty-seven, convey to the State of New York the said buildings with the grounds, apparatus, books, furniture and appurtenances now occupied and used by the normal

and training school, to hold, use, occupy and possess the same, while they shall be used for the purposes of such school. And such conveyance shall be deemed a full compliance with the requirements of the act first aforesaid.

§ 2. The said normal and training school of the city of Oswego shall thereupon be fully admitted to like privileges and appropriations with the normal schools created by the act entitled "An act in regard to normal schools," passed April seventh, eighteen hundred and sixty-six, and the provisions of said last named act, after that requiring the acceptance by the commissioners therein specified, shall apply to the said normal school of the city of Oswego.

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## CHAP. 466.

### AN ACT in regard to Normal Schools.

Passed April 7, 1866; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The Governor, the Lieutenant-Governor, the Secretary of State, the Comptroller, the State Treasurer, the Attorney-General and the Superintendent of Public Instruction, shall constitute a commission to receive proposals in writing in regard to the establishment of normal and training schools for the education and discipline of teachers for the common schools of this State from the board of supervisors of any county in this State; from the corporate authority of any city or village; from the board of trustees of any college or academy, and from one or more individuals. Such commission shall have power to accept or refuse such proposals, but the number accepted shall not exceed four. Such proposals shall contain specifications for the purchase of lands and the erection thereon of suitable buildings for such schools, or, for the appropriation of land and buildings to such use, and also the furnishing of such schools with furniture, apparatus, books, and every thing necessary to their support and management. Such proposals may have in view, either the grant and conveyance of such land and premises to the State, or the use of the same for a limited time, and for the gift to the State of furniture, apparatus, books and other things necessary to conduct such schools.

§ 2. If the proposals made by any board of supervisors, or by the corporate authorities of any city or village shall be accepted, said board or corporate authorities shall have power to raise, by tax, and expend, the money necessary to carry the same into effect; and if in their judgment it shall be deemed expedient, they shall have power to borrow money for such purpose, for any time not exceeding ten years, and at a rate of interest not exceeding seven per cent, and issue the corporate bonds of said county, city or village therefor.

§ 3. When the said commission shall have accepted proposals and determined the location of any one of such schools, and when suitable grounds and buildings have been set apart and appropriated for such schools, and all needful preparations made for opening the same in accordance with the proposals accepted, the commission shall certify the same in writing, and then their power under this act in relation to such school shall cease, and thereupon the Superintendent of Public Instruction shall appoint a local board, consisting of not less than three persons, who shall respectively hold their offices until removed by the concurrent action of the Chancellor of the University and the Superintendent of the Public Instruction, and who shall have the immediate supervision and management of such school, subject, however, to his general supervision and to his direction in all things pertaining to the school. Such local board shall have power to appoint one of their number chairman, and another secretary of the board. Two-thirds of each of said boards shall form a quorum for the transaction of business, and in the absence of any officer of the board another member may be appointed *pro tempore* to fill his place and perform his duties. It shall be the duty of such board to make and establish, and, from time to time, to alter and amend such rules and regulations for the government of such schools under their charge respectively, as they shall deem best, which shall be subject to the approval of the Superintendent of Public Instruction. They shall also severally transmit through him, and subject to his approval, a report to the Legislature on the first day of January in each year, showing the condition of the school under their charge during the year next preceding, and which report shall be in such form, and contain such an account of their acts and doings as the Superintendent shall direct, including especially,

an account in detail of their receipts and expenditures, which shall be duly verified by the oath or affirmation of their chairman and secretary.

§ 4. It shall be the duty of the local board, subject to the approval of the Superintendent of Public Instruction, to prescribe the course of study to be pursued in each of said schools. It shall be the duty of the Superintendent of Public Instruction to determine what number of teachers shall be employed in each school, and their wages, whose employment shall also be subject to his approval; to order, in his discretion, that one or more of said schools shall be composed exclusively of males, and one or more of females; to decide upon the number of pupils to be admitted to each of said schools, and to prescribe the time and manner of their selection, but he shall take care in such selection to provide that every part of the State shall have its proportionate representation in such school, as near as may be, according to population; but if any school commissioner district or any city shall not, for any cause, be fully represented in either of said schools, then the Superintendent of Public Instruction may cause the maximum number of such pupils to be supplied from any part of the State, giving preference, however, to those living in the county, city or village where such school is situated.

§ 5. All applicants shall be subject, before admission, to a preliminary examination before such of the teachers of the school as shall be designated by the local board for that purpose, and those who pass such examination shall be admitted to all the privileges of the school, free from all charges for tuition or for the use of books or apparatus, but every pupil shall pay for books lost by him, and for any damage of books in his possession; any pupil may be dismissed from the school by the local board for immoral or disorderly conduct, or for neglect or inability to perform his duties.

§ 6. The Superintendent of Public Instruction shall prepare suitable diplomas to be granted to the students of such school who shall have completed one or more of the courses of study and discipline prescribed; and a diploma signed by him, the chairman and secretary of the local board, and the principal of the school, shall be of itself a certificate of qualification to teach common schools; but such diploma may be annulled for the immoral con-

duct of its holder, in like manner as provided for the annulment of a diploma of State normal school, in title two, chapter five hundred and fifty-five of the Laws of eighteen hundred and sixty-four. The provisions of this section shall be applicable to the Oswego normal training school.

§ 7. The sum of twelve thousand dollars shall be annually, and is hereby appropriated for the support of each of said normal and training schools to be organized under this act, payable out of the income of the common school fund, to be paid by the Treasurer, on the warrant of the Comptroller, upon the certificate of the Superintendent of Public Instruction affixed to the proper accounts, verified by the oath or affirmation of the local board of each school; but none of the money hereby appropriated shall be paid for the purchase of any ground, site or buildings, for the use of such schools.

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## CHAP. 6.

AN ACT in relation to the Normal School located at Potsdam, in the County of St. Lawrence, pursuant to chapter four hundred and sixty-six, Laws of eighteen hundred and sixty-six, and to levy taxes for the purposes thereof.

Passed January 23, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The board of supervisors of the county of St. Lawrence is hereby directed and required to levy and collect, upon the taxable property of said county, in the manner provided by law for the collection of taxes, the sum of twenty-five thousand dollars, together with interest, at seven per cent per annum, as hereinafter provided, to be so levied and collected in five equal annual installments; the first installment, with interest on the full sum remaining unpaid, to be included in the tax for the present year, and one of the remaining installments, with interest as aforesaid, to be included in the tax for each and every year thereafter until the full sum of twenty-five thousand dollars, with interest as aforesaid, is levied and collected, the said moneys to be expended as hereinafter provided.

§ 2. And the said board of supervisors are hereby directed and required to levy and collect, upon the taxable property of the town of Potsdam, in the manner provided by law for the collection of taxes, the sum of thirty-five thousand dollars, together with interest, at seven per centum per annum, as hereinafter provided to be so levied and collected, in five equal annual installments; the first installment, with interest on the full sum remaining unpaid, to be included in the tax for the present year, and one of the remaining installments, with interest, as aforesaid, to be included in the tax for each and every year thereafter, until the full sum of thirty-five thousand dollars, with interest as aforesaid, is levied and collected, the moneys to be expended as hereinafter provided.

§ 3. The board of trustees of the village of Potsdam are hereby directed and required to levy and collect upon the taxable property of said village, in the manner provided by law for the collection of taxes therein, the sum of ten thousand dollars, together with interest, at seven per centum per annum, as hereinafter provided, to be so levied and collected in five equal annual installments; the first installment, with interest on the full sum remaining unpaid, to be included in the tax in said village for the present year, and one of the remaining installments, with interest as aforesaid, to be included in the tax therein for each and every year thereafter, until the full sum of ten thousand dollars, with interest, as aforesaid, is levied and collected, the said moneys to be expended as hereinafter provided.

§ 4. The said moneys so to be levied and collected upon said county, town and village, or so much thereof as shall be necessary for that purpose, shall be expended to prepare a site and to provide suitable buildings, to furnish apparatus, books and furniture, for a normal and training school for the education and discipline of the common school teachers of this State, said buildings to be located upon the land and premises situate in the village of Potsdam, described in the proposition of the trustees of St. Lawrence academy, accepted by the commission appointed by chapter four hundred and sixty-six, Laws of eighteen hundred and sixty-six, entitled "An act in regard to normal schools."

§ 5. Bloomfield Usher, T. Stratfield Clarkson, 2d, Hiram H. Peck, Henry Watkins, Erasmus D. Brooks and Charles Cox, are hereby appointed a commission to prepare and improve the said

lands and premises, and provide suitable buildings thereon, and to furnish proper apparatus, books and furniture for the said normal and training school at Potsdam, a majority of whom shall constitute a quorum for the transaction of business. Such commission shall have power to appoint from their number a chairman, secretary and treasurer of said commission, and in the absence of any officer of such commission, another member may be appointed, *pro tempore*, to fill his place and perform his duty, and such commission may appoint such committee, and establish, and, from time to time, alter and amend, such rules and regulations for its government, in the discharge of its duties, as it shall deem best. In case of the death, refusal to act, resignation, or removal from the county of St. Lawrence, of any member of such commission, his successor shall be appointed by a majority of the remaining members of such commission. The Governor of the State may accept the resignation of any member of said commission upon the recommendation of a majority of said commission, for good and sufficient cause. Before entering upon the discharge of their duties, the members of said commission hereby appointed, or a majority of them, shall unite in joint and several bonds, with sufficient sureties to be approved by the county judge of St. Lawrence county, one of said bonds to the board of supervisors of St. Lawrence county, in the penal sum of twenty-five thousand dollars; one of said bonds to the town of Potsdam, in the penal sum of thirty-five thousand dollars; one of said bonds to "the village of Potsdam," in the penal sum of ten thousand dollars; each bond conditioned that each and every of the said commissioners so executing the said bond, and each and every of their successors to be appointed pursuant to this act, shall in all things faithfully discharge his duties, and faithfully account for all moneys and securities received by him as such commissioner. Upon filing the said bond to the county of St. Lawrence with the treasurer of said county, and upon filing the said bond to the town of Potsdam with the town clerk of said town, and upon filing the said bond to the village of Potsdam with the clerk of the board of trustees of said village, the said commissioners so uniting in said bonds shall be duly qualified to act as such commissioners, and, in case a majority of the persons herein named shall so qualify, they shall constitute such commission, and shall proceed to appoint other commissioners in

the place and stead of those herein named, who shall not have united in said bonds. The obligors upon said bonds respectively shall be liable for the acts and omissions of each and every of the commissioners appointed, or who may be appointed, pursuant to this act. And the said commission, before making an appointment of any commissioner, may require of him such security for the faithful performance of his duty as it may deem proper. The said commission shall be known as the commission to aid in the establishment of a normal and training school at Potsdam, and, as such, may enter into contracts, take security from members to be appointed by it, and sue and be sued in the courts of this State; and executions may be issued upon any judgment obtained against such commission, against the property of any or all of the persons constituting such commission, or who may have constituted such commission, leave to that effect being first obtained from the court in which such judgment was rendered.

§ 6. The treasurer of the county of St. Lawrence is hereby directed and required to procure suitable blanks, and the said treasurer, and the chairman of the board of supervisors of said county, or in case of a vacancy in said chairmanship, then the said treasurer and the county judge of said county are hereby directed and required to issue the bonds of said county, with interest coupons attached, in the form to be adopted by the said treasurer and chairman, or, in case of a vacancy in the said chairmanship, then by the said treasurer and the said county judge, for the sum of twenty-five thousand dollars, the same to bear interest at seven per centum per annum from date, such bonds for one-fifth of said last mentioned sum to be payable with interest on the first day of March, eighteen hundred and sixty-eight, and one-fifth of said sum of twenty-five thousand dollars to be payable on the first day of March, each year thereafter, until the full sum is paid; all of said bonds, except those due on the first day of March, eighteen hundred and sixty-eight, to bear coupons for annual interest, except for the interest falling due when such bonds are payable, to be payable on the first day of March each year.

§ 7. The town clerk of the town of Potsdam is hereby directed and required to procure suitable blanks, and the supervisor and town clerk of said town are hereby directed and required to issue the bonds of said town, with interest coupons attached in the form



to be adopted by them, for the sum of thirty-five thousand dollars, the same to bear interest at seven per centum per annum from date; such bonds for one-fifth of such last-mentioned sum, to be payable with interest on the first day of January, eighteen hundred and sixty-eight, and one-fifth of the said thirty-five thousand dollars to be payable on the first day of January each year thereafter, until the full sum is paid. All of said bonds, except those due on the first day of January, eighteen hundred and sixty-eight, to bear coupons for annual interest, except for the interest falling due when such bonds are payable, to be payable on the first day of January each year.

§ 8. The president of the board of trustees of the village of Potsdam is hereby directed and required to procure suitable blanks, and the president and clerk of said board of trustees are hereby directed and required to issue the bonds of said village of Potsdam, with interest coupons attached, in the form to be adopted by them, for the sum of eight thousand dollars, the same to bear interest at seven per centum per annum from date, said bonds for one-fourth of said sum of eight thousand dollars, to be payable with interest on the first day of April, eighteen hundred and sixty-eight, and one-fourth of said sum of eight thousand dollars to be payable on the first day of April each year thereafter, until the full sum is paid; all of said bonds to bear coupons for annual interest, except for the interest falling due when such bonds are payable, to be payable on the first day of April each year.

§ 9. The said taxes in this act directed to be levied and collected upon the county of St. Lawrence shall be paid to the treasurer of said county, and applied by him to the payment of the bonds of said county herein directed to be issued, and the interest thereon, as the same shall become due and payable; and the said taxes in this act directed to be levied and collected upon the town of Potsdam shall be paid to the supervisor of said town, and by him be applied to the payment of the bonds of said town herein directed to be issued, and the interest thereon, as the same shall become due and payable; and the said taxes in this act directed to be levied and collected upon the village of Potsdam shall be paid to the treasurer of said village; and the tax for the present year shall be paid by said treasurer to the said commission, after the members thereof have qualified as herein directed; and

the remainder of said tax shall, each year, be paid to said treasurer, and by him be applied to the payment of the bonds of said village herein directed to be issued, and the interest thereon, as the same shall become due and payable. And immediately after the commission constituted by this act shall have qualified as herein provided, the said county, town and village authorities herein directed to issue bonds in behalf of said county, town and village, shall respectively deliver the said bonds so to be issued, as aforesaid, to the said commission herein constituted; to be, by the said commission, used and negotiated at not less than the par value thereof, and the avails thereof applied by the said commission to prepare and improve the said land and premises, described in the said proposition of the board of trustees of St. Lawrence academy, to the said commission constituted by the said act; entitled an act in regard to normal schools, to provide thereon suitable buildings and to furnish apparatus, books, and furniture for one of said normal schools at Potsdam; provided that no building shall be repaired or erected upon said land and premises until the Attorney-General of this State shall certify in writing to such commission, that the use of the said lands and premises, and the buildings and erections thereon, so long as the same shall be used for the purpose of a normal and training school, as contemplated by the said act, in regard to normal schools, has been properly secured to this State; all which the Attorney-General of this State is hereby required to certify in writing, to the commission constituted by this act, when such use of such lands and premises has been properly secured to this State, according to the true intent and meaning of this act. In preparing and improving the said lands and premises, and providing such buildings, the said commission may tear down, remove, repair, reconstruct, or rebuild any structure or building now on the said premises, and use the materials of which any of such buildings are composed in the construction of other buildings upon said lands and premises; and they may also incorporate any of the buildings upon said lands and premises in additional buildings to be constructed thereon; and the said commission shall pay, to be applied upon the purchase-money of the property included in said proposition of the board of trustees of St. Lawrence academy, and known as the Presbyterian church property, such sum, not exceeding ten thousand dol-

lars, as the Superintendent of Public Instruction shall certify the said materials and buildings upon said premises to be worth, to be used in providing the aforesaid buildings. The plans and specifications for the said buildings shall be approved by the said commission constituted by chapter four hundred and sixty-six, Laws of eighteen hundred and sixty-six. The commission constituted by this act shall proceed diligently in the discharge of their duties, under this act, and when the said buildings, and the furniture, apparatus and books, provided for by this act, have been accepted by said commission, so appointed by said chapter four hundred and sixty-six, Laws of eighteen hundred and sixty-six, as provided by said act, or within two years after the passage of this act, the said commission hereby constituted shall account to the board of supervisors of said county for the moneys and securities received from the county of St. Lawrence, which board, upon such accounting, shall have power, upon examination of the accounts of such commission, to approve of the same and discharge the said commission from further liability, upon their said bond to said county. And said commission shall account to the board of town audit, of the town of Potsdam, for the moneys and securities received from the town of Potsdam, which board, upon such accounting, shall have power to approve of the account so to be rendered, and discharge said commission from further liability, upon their said bond to said town. And said commission shall account to the board of trustees of the village of Potsdam for the moneys and securities received from said village, which board of trustees, upon such accounting, shall have power to approve of the account so to be rendered, and discharge such commission from further liability, upon their said bond to said village.

§ 10. The amount in this act provided to be paid by the said county, town and village, for the purposes in this act declared, shall apply on the amount that shall be paid by the said county in satisfaction of the proposition made by said board of supervisors of said county to the said commission constituted by said act in regard to normal schools, by resolution of said board of supervisors, dated December eighteenth, eighteen hundred and sixty-six, and the amount that shall be paid by the said town and village of Potsdam, shall apply upon and toward the satisfaction of the propositions of the board of trustees of said village to

said commission constituted by said act in regard to normal schools.

§ 11. Authority is hereby given to the board of supervisors of the county of St. Lawrence, at any annual meeting thereof, to repay to the town of Potsdam such portion of the tax hereby imposed upon said town as such board of supervisors shall determine to be just and proper. And in case the moneys to be raised as in this act provided shall be insufficient to complete such buildings and furnish such apparatus, books and furniture as herein intended, the said board of supervisors, to supply such deficiency, may raise upon said county and pay over to the commission by this act created a further sum, not exceeding ten thousand dollars; and for such purpose said board of supervisors may levy and collect a tax upon said county, and issue county bonds representing the same, as said board may determine necessary to carry out the powers in this section given.

§ 12. The Superintendent of Public Instruction may, if, in his opinion, suitable buildings and rooms are provided at the village of Potsdam for the accommodation of teachers and pupils of a normal school, immediately after the commission by this act created shall have become duly qualified, open and put in operation a normal and training school at said village, in pursuance of this act, and of chapter four hundred and sixty-six of the Laws of eighteen hundred and sixty-six.

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## CHAP. 21.

AN ACT in relation to the Establishment of a Normal and Training School in the Village of Brockport.

Passed February 2, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows :*

SECTION 1. The trustees of the village of Brockport are hereby authorized to levy from time to time, upon all the taxable property in said village, taxes, not exceeding in the aggregate the sum of fifty thousand dollars, in the same manner as other village taxes are levied, for the purpose of aiding in the establishment of a normal and training school in said village, and collect the same as other

village taxes are collected, and to use and disburse the moneys thus obtained for the purpose above mentioned; and the said trustees shall have power, if they deem the same advisable, to borrow money on the credit of said village and issue bonds therefor, bearing interest at the rate of seven per cent per annum, the aggregate amount not to exceed fifty thousand dollars, which shall not be sold or disposed of at less than their par value, for the purchase of real estate and the assumption of any incumbrances thereon, and to make contracts and incur liabilities in their corporate capacity, for the purpose aforesaid; but the aggregate of all such bonds, contracts and liabilities, together with the amount of taxes levied and collected under the provisions of this act, shall not exceed the sum of fifty thousand dollars.

§ 2. The collector of said village shall execute such additional bond as the said trustees shall determine for the faithful discharge of his duties, in view of the increased responsibility arising under this act, and the treasurer of said village, or other person into whose custody or under whose control the said funds shall come, shall, before receiving the same, also in like manner give bonds for the faithful discharge of his duties.

§ 3. The Superintendent of Public Instruction may, if in his opinion suitable buildings and rooms are provided at the village of Brockport, for the accommodation of teachers and pupils of a normal school, open and put in operation immediately a normal and training school at said village, in pursuance of chapter four hundred and sixty-six of the Laws of eighteen hundred and sixty-six; but such power and discretion shall cease on the first day of October, eighteen hundred and sixty-eight.

## CHAP. 96

AN ACT to amend an act entitled "An Act in relation to the Establishment of a Normal and Training School in the Village of Brockport," passed February second, eighteen hundred and sixty-seven.

Passed March 19, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The first section of an act entitled "An act to amend an act entitled 'An act in relation to the establishment of a normal and training school in the village of Brockport,'" passed February second, eighteen hundred and sixty-seven, is hereby amended so as to read as follows:

§ 1. The trustees of the village of Brockport having made proposals to the commission appointed by chapter four hundred and sixty-six of the Laws of eighteen hundred and sixty-six, for the establishment of a normal and training school in the village of Brockport in the county of Monroe, pursuant to said act, which proposals have been accepted by said commission, the said trustees of the village of Brockport are hereby authorized, directed and empowered to carry said proposals into effect, and raise the moneys necessary for that purpose; and to that end to levy and collect taxes from time to time as they shall deem necessary, and assess or cause the same to be assessed to and upon the persons and property subject to taxation in said village, but not exceeding the sum of fifty thousand dollars in the aggregate, and to make contracts and incur liabilities in their corporate capacity; and also, if in their judgment it shall be deemed expedient, to borrow money, for any time not exceeding ten years, on the credit of said village, and issue the corporate bonds therefor; and to issue such bonds for the purchase of real estate and the assumption of any incumbrances thereon, or for any liabilities incurred in their corporate capacity, for the aforesaid purpose; but such bonds shall not be disposed of at less than their par value; the rate of interest thereon shall not exceed seven per cent; and the aggregate of all such bonds and liabilities shall not exceed fifty thousand dollars. Whenever the said trustees shall levy any tax for any of the purposes aforesaid, the same shall be assessed and apportioned by

them to and upon the persons and property subject to taxation in said village, according to the valuations of such property in the last completed assessment roll of said village, made prior to the levying of such tax, as the same shall be corrected and revised by such trustees; and they shall correct and revise the same, as near as may be, according to the facts, as often as they shall levy any such tax. And all taxes levied and assessed under the provisions of this act, shall be collected in the same manner as other taxes in said village; shall be a lien in the like cases and in like manner, and the trustees and collector for the time being shall respectively have all the powers in relation thereto and for the collection of the same which are given for the collection of taxes by the act entitled "An act to condense and amend the several acts relating to the village of Brockport," passed April ninth, eighteen hundred and fifty-two.

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### CHAP. 571.

AN ACT to provide for raising Money to aid in the Establishment of a Normal School at Brockport.

Passed April 23, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The supervisors of the county of Monroe are hereby authorized to appropriate moneys to aid in the establishment of a normal and training school at Brockport, in said county, and levy and collect the same by tax, in the same manner as other county taxes are levied and collected.

§ 2. Any of the towns in said county, by a vote of a majority of the electors thereof present at any annual or special town meeting therein, duly called by the town board of said town for that purpose, may appropriate moneys to aid in the establishment of such normal and training school, and the same shall thereupon be added, by the supervisors of the county, to the tax of such town, for that year, or that and subsequent years, by installment, and collected in the same manner as other town taxes.

## CHAP. 195.

AN ACT in relation to the Establishment of a Normal and Training School in the Village of Geneseo, to be called "The Wadsworth Normal and Training School."

Passed March 29, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The electors of the town of Geneseo, in the county of Livingston, are hereby authorized to vote, at the next annual town meeting held therein, or at a special town meeting called for the purpose, in the manner now provided by law for holding special town meetings, on the question of raising money (not exceeding one hundred thousand dollars), by assessing the real and personal property of the inhabitants of said town, by the board of supervisors of said county, to aid in the erection and furnishing of normal and training school building or buildings, in said town of Geneseo, to be called "The Wadsworth normal and training school," and the supervisor of the town of Geneseo is hereby authorized to borrow money on the credit of said town, and issue bonds for such sums as shall have been voted to be raised, bearing interest at the rate of seven per cent per annum, payable annually, the aggregate amount of said bonds not to exceed the sum which shall have been so voted, and which shall not be sold or disposed of at less than their par value, which said bonds shall become due and payable in ten equal annual installments, the last of said installments to become so due and payable within ten years after the passage of this act.

§ 2. It shall be the duty of the board of town auditors of the town of Geneseo, at their annual meeting in the fall of each year, to include in their certificate of their town audit, the same as any other town charge or liability, so much of the sum which shall have been so voted, and interest thereon, as shall become due within one year next thereafter; and the same shall be levied by the board of supervisors of said county, upon the taxable property of said town and collected in the same manner as other town expenses.

§ 3. It shall be the duty of the supervisor of the said town of Geneseo, before doing any act hereby authorized, to execute his



bond with one or more sureties, to be approved by the county clerk and filed with him, conditioned for the faithful discharge of his duties in relation to said moneys so raised for such normal and training school, and that he will pay the same over to the person or persons legally entitled thereto, and duly account for the same as for other town moneys received by him as supervisor.

§ 4. The Superintendent of Public Instruction may, if in his opinion suitable temporary buildings and rooms are provided in the village of Geneseo for the accommodation of teachers and pupils of a normal school, put in operation a normal and training school in such temporary buildings in said village, to be called "The Wadsworth normal and training school," and for such purpose he may appoint a local supervising board for such school, who shall have all the powers and be subject to the same restrictions as the local boards appointed for the normal schools located by chapter four hundred and sixty-six of the Laws of eighteen hundred and sixty-six.

§ 5. This act shall be taken and construed as locating and authorizing the establishment of a normal and training school at the village of Geneseo, to be called "The Wadsworth normal and training school," which school shall have all the rights, appropriations of money and privileges of either of the normal and training schools authorized by chapter four hundred and sixty-six of the Laws of eighteen hundred and sixty-six, and to be subject to the same control and supervision, rules and regulations; and the provisions of said chapter four hundred and sixty-six, so far as the same are consistent with this act, and the provisions thereof, are hereby applied to the normal and training school hereby authorized and located.

§ 6. The following three persons, namely, Craig W. Wadsworth, John Rorbach and Lockwood L. Doty, are hereby constituted and appointed a commission, and are hereby authorized to locate and procure the site for, and to procure to be erected and furnish the buildings, fixtures and appurtenances necessary and proper for such normal and training school, and said commissioners, or a majority of them, are hereby authorized to give and make, or cause to be given and made, any and all necessary transfer of property to the State for the use and benefit of such normal and training school, which may be required by law; and upon their

order, or upon the order of a majority of said commission, the said supervisor is hereby authorized and required to pay over the moneys which he may have received for the purposes of such normal and training school.

§ 7. The board of supervisors of the county of Livingston are hereby authorized, by resolution or otherwise, to cause to be raised, levied and collected upon the taxable property of such county, such sum or sums of money, not exceeding one hundred thousand dollars, as such board may deem proper, to aid in paying the necessary charges and expenses incurred in the establishment of such normal and training school at Geneseo.

§ 8. This act shall take effect immediately.

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## CHAP. 223.

AN ACT in relation to the Establishment of a Normal and Training School in the Village of Fredonia, Chautauqua county.

Passed March 30, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The trustees of the village of Fredonia are hereby authorized to assess and collect from time to time, upon all the taxable property in said village, taxes not exceeding in the aggregate one hundred thousand dollars, in the same manner as other village taxes are assessed and collected, for the purpose of establishing a normal and training school in said village, and to use and disburse the money thus obtained for the purpose above mentioned; and the trustees shall have power, if they deem the same advisable, to borrow money on the credit of said village, and issue bonds therefor, bearing interest at the rate of seven per cent per annum, the aggregate amount not to exceed one hundred thousand dollars, and which shall not be sold for less than their par value, for the purchase and improvement of the site, and for erecting school buildings thereon for said normal and training school, with departments for academical, experimental and practicing schools, and for furnishing the same with all needful school furniture, apparatus and books, and to make contracts and incur liabilities in their corporate capacity, for the purposes aforesaid.

But the aggregate of all such bonds, contracts and liabilities, together with the amount of taxes assessed and collected under the provisions of this act, shall not exceed the sum of one hundred thousand dollars.

§ 2. The collector of said village shall execute such additional bonds as the said trustees shall approve, and in a sum of double the amount, to be collected in any one year, for the faithful discharge of his duties in view of the increased responsibility arising under this act. And the treasurer of said village, or other person into whose custody, or under whose control, the said funds shall come, shall, before receiving the same, in like manner and amount, give bonds for the faithful performance of his duties.

§ 3. The Superintendent of Public Instruction may, if in his opinion suitable buildings and rooms are provided at the village of Fredonia, for the accommodation of teachers and pupils of a normal school, prior to the completion of the buildings aforesaid, open and put in operation at any time a normal and training school at said village, in pursuance of chapter four hundred and sixty-six, of the Laws of eighteen hundred and sixty-six, and for this purpose he may appoint the local board to take charge of such school, provided for in said act, at any time.

§ 4. This act shall take effect immediately.

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## CHAP. 199.

AN ACT in relation to raising Moneys in the Town of Cortlandville, in the County of Cortland, for the Purpose of aiding in the Erection and Furnishing of a Normal School Building in said Town.

Passed March 30, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The electors of the town of Cortlandville, in the county of Cortland, are hereby authorized to vote at the next annual town meeting held therein, or at a special town meeting, called for the purpose, in the manner now provided by law for holding special town meetings, on the question of raising money (not exceeding fifty thousand dollars in amount), by assessing the

real and personal property of the inhabitants of said town, by the board of supervisors of the county of Cortland, to aid in the erection and furnishing of a normal school building in said town of Cortlandville, as located by the commissioners, under chapter four hundred and sixty-six of the Laws of eighteen hundred and sixty-six.

§ 2. The board of supervisors of the county of Cortland are hereby directed and required to levy and collect upon the taxable property of the said town of Cortlandville, in the manner provided by law for the collection of taxes, the sum which shall have been voted to be raised by the electors of said town, under the first section of this act, which sum shall be so levied and collected in such installments and at such times as shall be determined upon by the electors of said town, at said annual or special town meeting, to be expressed by a resolution passed at such meeting.

§ 3. The supervisor of the town of Cortlandville is hereby directed and required to procure suitable blanks, and to issue the bonds of said town, signed by the supervisor thereof, with interest coupons attached, in the form to be adopted by him, for the sum which shall have been voted as aforesaid to be raised, bearing interest at the rate of seven per cent per annum, from the date thereof; such bonds to be issued in such separate sums and payable at such times as shall be determined upon by the electors of said town, by a resolution passed at the town meeting aforesaid.

§ 4. The taxes in this act directed to be levied and collected shall be paid to the treasurer of the corporation of Cortland village, and by him be applied to the payment of the bonds of said town, herein directed to be issued, and the interest thereon, as the same shall become due and payable.

§ 5. The supervisor of said town shall deliver the bonds to be issued as aforesaid, to the board of trustees of Cortland village aforesaid, to be by them used and negotiated at not less than the par value thereof, and the avails applied by them toward the erection of said normal school building, and to supply the same with the necessary apparatus, books and furniture, and which trustees shall give security to be approved by the county judge, for the faithful application of the avails of said bonds, pursuant to this act.

§ 6. This act shall take effect immediately.

## CHAP. 583.

AN ACT to amend the Act entitled "An Act in regard to Normal Schools," passed April seventh, eighteen hundred and sixty-six, and providing for a Normal and Training School in the City of Buffalo.

Passed April 23, 1867; three-fifths being present.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The commissioners named in the first section of the act entitled "An act in regard to normal schools," passed April seventh, eighteen hundred and sixty-six, and of which this act is an amendment, shall be and they are hereby authorized, in their discretion, to accept the proposals which were made to them under the provisions of the said act, for the location of a normal and training school in the city of Buffalo, or any additional or other proposals which may be made in respect thereto; and, upon the acceptance of such proposals, all and every of the provisions of the said act shall apply to said normal and training school, and the location, establishment, conduct and maintenance thereof, and shall have full force and effect in respect thereto and to all matters connected therewith, in the same manner and with the like effect, as though the said proposals had been duly accepted according to and under the provisions of said act; and all acts, resolutions and proceedings of the common council of the city of Buffalo, and of the board of supervisors of the county of Erie, in respect to the location or establishment of a normal and training school in said city, are hereby confirmed and made effectual for the purposes intended, in the same manner, and with the like effect, as if a normal and training school had been duly located in said city by the acceptance of proposals therefor under the provisions of said act.

§ 2. This act shall take effect immediately.

## CHAP. 725.

AN ACT to increase the Compensation authorized by the Act entitled "An Act to provide for the Care and Education of Indigent Deaf Mutes under the Age of Twelve Years," passed April twenty-fifth, eighteen hundred and sixty-three.

Passed April 24, 1867.

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The expenses for the board, tuition and clothing of the children under the age of twelve years, placed in the New York institution for the instruction of the deaf and dumb, pursuant to the provisions of the third and fourth sections of chapter three hundred and twenty-five, Laws of eighteen hundred and sixty-three, shall, until otherwise directed by law, be estimated at the rate of two hundred and thirty dollars per capita, instead of the amount therein provided.

§ 2. This act shall take effect on the first of September, eighteen hundred and sixty-seven.

# DIGEST OF DECISIONS

OF

## STATE SUPERINTENDENTS.

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### APPEALS.

It is a rule of this department, that all acts of school district officers will be regarded as regular unless duly appealed from.

This appeal is brought from the proceedings of a special meeting held in district No. 9, Preble and Scott, August 5, 1848, for the purpose of receiving the report of Elam Dunbar, as trustee of said district, the said Dunbar having resigned his office in December, 1847.

It is immaterial whether the meeting of August 5, 1848, which received and accepted the report of Mr. Dunbar, was regular or not. His report and the complaints made against him were of acts previous to the meeting of December, 1847, at which he resigned, and at which his report should have been made and accepted.

It is a rule of this department, that all acts and proceedings of school officers will be regarded regular unless duly appealed from. Whatever, therefore, may have been the neglect of duty of Mr. Dunbar while in office, provided he has not rendered himself liable by squandering or losing moneys belonging to the district, he will be regarded as having discharged his duties faithfully.

Appeal dismissed. Per Morgan, January 24, 1849.

It is the policy of the department to discourage the bringing of appeals for light and trifling causes.

It is the policy of the department to discourage the bringing hither of appeals for light and trifling causes. There should be some *real* grievance, some positive and serious injury sustained, to justify a resort to this department for redress. Per E. W. Keyes, Deputy Superintendent, February 15, 1859.

The Superintendent of Public Instruction will not entertain appeals in relation to fines and penalties. The imposition of fines and penalties belongs to the courts of law.

This appeal is brought for the purpose of fixing upon the school commissioner the responsibility for the loss, by the district, of the public moneys to which they would have been entitled had twenty-eight weeks' school been taught therein by a duly qualified teacher, and to compel said commissioner to make good such loss to the district, in accordance with the provisions of section 1 of title 13 of the general school law. The Superintendent has invariably refused to assume jurisdiction of cases in the nature of a prosecution for the recovery of a fine or penalty, and he will not vary his rule in the present instance. If, by Mr. Tozer's neglect, the district has lost money which they otherwise would have received, ample redress will be given by the courts of

law having jurisdiction of the case. The Superintendent has no power to direct the payment by any person of money other than the public money, or that belonging to the district; consequently it belongs to the regular courts of law to enforce the payment of fines and penalties, and hence this appeal must be and hereby is dismissed. Per V. M. Rice, June 6, 1866.

Appeals from tax lists must be brought by the party considering himself aggrieved, immediately upon becoming apprised of the existence of such tax list. A delay until collection is enforced by levy and sale will be fatal.

On the appeal of J. S. B., one of the trustees, from the action of his associate trustees in the matter of the levy and sale of the appellant's property to satisfy a tax levied against him, the facts go to show that the tax list upon the appellant was assessed, and the warrant under which his property was sold, were made out by the two trustees without consultation with the appellant.

The appellant occupies a relation to this question which no other inhabitant does. He was one of the trustees, and as such, was bound to counsel with and advise his associates of any error in their proceedings as soon as apprised of it, and if they refused to accept or act upon his advice, then he should seek to bring the matter in dispute to the earliest and simplest possible adjudication. If he fails to do this, he may be found to have acquiesced in the proceedings, and to have waived his personal rights in the matter.

Had he refused to waive his rights, and brought an appeal from the proceeding of his associates at a time when the proper order could have been made for revision and correction of the tax list, the Superintendent would have felt bound to make such an order. But he neglected the equitable remedy, and waited until his property had been sold, and until the proper remedy for him, was a legal remedy, and then asks for the equitable interference of the Superintendent. In my judgment it is too late. The appellant has himself suffered his cause to go beyond the jurisdiction of the Superintendent, and must, therefore, abide by the result of his neglect. Per E. W. Keyes, Deputy Superintendent, May 18, 1864.

#### Appeal disregarded for vagueness of statement.

The appellants are unfortunate in so expressing themselves as to leave all the material facts which they seek to establish, to be inferred only. There is hardly a distinct, emphatic assertion from the beginning to the end of the appeal. Their diagrams give me no idea of the situation of the district, or of the property set off—and generally their statements, or what they claim and intend as such, are vaguely and indefinitely hinted.

For these reasons I am unable to know and understand, still less to consider the merits involved, and the appeal must, therefore, be dismissed. Per E. W. Keyes, Deputy Superintendent, August 2, 1864.

Appeals to this department will not be considered unless they are legible and intelligible in statement.

It is indispensable that appeals to the Superintendent should be legible and intelligible. A man is not to be blamed for his inability to prepare an appeal in such form that it will answer these conditions; it is only his misfortune, and he is thereby compelled to procure the assistance of some one who is able to express himself with some measure of clearness. Per E. W. Keyes, Deputy Superintendent, April 24, 1864.

The department will not entertain questions of controversy that are at issue before the civil courts.

Where the questions at issue in a matter of appeal to this Department were before the civil courts for adjudication, *held*, that it would be altogether improper for this department to seek to forestall the action and judgment of the court, when it has knowledge of the pendency of the action before that tribunal. Per V. M. Rice, Superintendent, December 1, 1863.



Equitable relief cannot be afforded where the same is contrary to law.

On an appeal from the refusal of the trustees to pay a portion of the public money to one B., who taught the district school during a portion of the winter, it appears that two of the trustees, against the advice and without the consent of the third, hired one J. P. to teach the district school during the winter term. The said J. P. having proved incompetent to teach, the school was closed, and the majority of the trustees refused to hire another teacher unless the inhabitants would agree to become responsible for his wages. This they refused to do, and, at their request, the third trustee, without consultation with his associates, hired the said B. to teach the school the remainder of the term. He taught according to agreement, but the majority of the trustees refuse to acknowledge the legality of this proceeding, or to pay any part of the wages thus earned.

The action of the trustees in refusing to pay B. cannot be impeached. Whatever wrong they may have done, the said B. was illegally hired, and has no claim upon them. Even though, under the circumstances, the department should find that the justice and equity of the case were with the appellants, still equitable relief can be afforded only when there is some legal claim. Equity follows law; it cannot be enforced in opposition to law. Here there is no legal claim upon which equitable action can be predicated. The department has no power to compel the trustees to do what the law does not require them to do. Per V. M. Rice, Superintendent, June 10, 1862.

If commissioners withhold assent to raise a tax for building a school-house larger than \$400 (\$1000),\* their refusal is subject to review upon appeal.

The inhabitants of the village of Cuba had been united in one district by the consolidation of two others. They had been offered a site for a school-house, in a central and commodious location, upon the sole consideration that they should erect upon it a house worth \$800. They unanimously voted to accept the site and raise the tax, and applied to the school commissioners for consent to levy that sum. Consent was refused on the ground that the consolidation of the districts would be the means of breaking up the select school hitherto maintained in the district, and, further, that the inhabitants were unable to bear the increased burdens of such an organization.

The commissioners have a discretionary power to grant or refuse their consent. But in this case it was not wisely exercised. They were bound to have a stronger interest in the improvement of the common schools than in the welfare of a private select school. The inhabitants, who ought to understand their own interests, and know their pecuniary resources, had unanimously resolved to raise the tax and shoulder the burden of the new organization. The commissioners ought not to assume that they had overestimated their ability.

The majority of the inhabitants of a district may consist of persons destitute themselves of pecuniary resources, and desirous to avail themselves of the property of the minority to build an unnecessarily costly school-house for the district. The check, which the commissioners possess, to abuses like this, is wise and salutary, and that check was undoubtedly conferred with a view to the possible happening of cases of this description.

The discretion exercised in this case, like that of granting or refusing a certificate to a teacher, is the subject of appeal. The authority of the Superintendent upon appeal extends to all matters arising under the school laws. His decisions have been treated as conclusive by the courts, and acquiesced in by the Legislature and the people.

The commissioners were ordered to give their consent to the tax of \$800. Per Spencer, July 19, 1841.

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\* The amount which a district might vote for the purchase of a site was first fixed at \$400, subsequently raised to \$800, and is now \$1000.

Subsequently the same case came up a second time, on the refusal of the commissioners to obey the order of the Superintendent. The previous decision was sustained and enforced in an elaborate opinion, from which we take the portions treating of discretionary powers, and the appellant jurisdiction of the school department.

"The discretion of public officers is a legal one, to be governed by sound principles, and not by the capricious whim of the individual, and the instances are frequent where courts of law regulate and direct the exercise of discretionary power by officers, where third persons have an interest in such exercise. The only discretion which courts do not undertake to control is that which, according to Justice Sutherland (5 *Wendell*, 125), 'is not and cannot be governed by any fixed principles and rules.' Few matters would seem more susceptible of the application of fixed rules than the size of a school-house necessary to accommodate properly a given number of children, the amount of money required for its construction, and the ability of a district to raise a given sum. So that, even upon any of the ordinary processes of law, this would be a case where the discretionary power of commissioners could be regulated and controlled. But when we consider that a tribunal has been erected for the express purpose of supervising all the officers engaged in the administration of the common school system; that there is scarcely an act to be performed by them which does not involve more or less discretion, and that an appeal is given from all these acts in the most comprehensive terms; we see at once that the rules which would govern legal proceedings on common law process are not the proper guides, and that we must recur to broader and more enlarged principles.

"The word 'appeal' comes from the civil law, and its nature and office is to substitute the appellate tribunal for that whose acts are examined; and, if the case be one involving discretion, then the appeal invokes that very discretion in the superior, in the same manner and to the same extent that it was possessed by the inferior. 'The cause is in the appellate court,' says the supreme court of the United States, in 1 *Wheaton* 112, 'as if it were in the inferior court.'

"The great majority of cases decided in this department are those involving more or less discretionary power.

"The statute itself enumerates many cases that are entirely of a discretionary character. The decisions of district school meetings upon any subject upon which they are competent to act, such as the designation of the site of a school-house, the amount of money to be raised by tax, and the omission to levy taxes, involve large discretion, but are nevertheless subject to appeal by the express words of the law. The formation and alteration of school districts must be guided by a sound judgment upon various facts and circumstances, such as the number of children, the amount of taxable property, the extent of territory, and the convenience of the inhabitants. Some fixed rules may be applied, but in many cases the decision must depend on general ideas of the propriety and fitness of things.

"Among cases not enumerated, and which fall within the fourth subdivision of the section conferring the right of appeal, the following are of daily occurrence, viz.: The granting or refusing a license to a teacher; the valuations of school-houses or other property on the formation of new districts; the refusal of trustees to call special meetings, to employ teachers, or to keep the schools open, and the employment and dismissal of teachers; the government of the school; the admittance and expulsion of scholars, etc. Indeed it would be difficult to specify a single act which any officer concerned in the administration of the system may perform, that has not been the subject of appeal.

"The present case presents less opportunity for the exercise of discretion than many of those above enumerated. The expense of a school-house must depend upon its size and materials. Its size, the number of rooms, and the proper conveniences, will depend upon the number of children in the district of the proper age to occupy it. The only other element for consideration is

the ability of the district, a fact easily ascertained from the assessment roll. There is, therefore, nothing in the nature of the decision to be made, to prevent its being reviewed and examined upon fixed and settled principles.

"So far as our laws afford any analogy in cases of appeal, there does not appear to be any distinction between discretionary and other cases. Thus, appeals to county judges from commissioners of highways, respecting the opening, altering and discontinuing of highways, necessarily involve that discretion which depends on private judgment.

"Upon the most mature deliberation, then, I cannot doubt that the granting or refusing of a certificate, that a larger sum than \$400 should be raised for building a school-house, is necessarily the subject of an appeal to the Superintendent. And as, in all cases of appeal, the statute declares his opinion to be 'final,' there must be some mode of giving it effect. In the present case, the commissioners decline obedience to the order directing them to grant the required certificate. From that refusal an appeal has been made, and the commissioners have answered. The whole system must be very defective if there be no power to have an act performed which the competent tribunal has determined to be legal and proper. Perhaps the appellants may enforce the order of the Superintendent, by an application to the supreme court for a mandamus.

"But, if there be a more direct, simple and less expensive remedy, I am bound to pursue the policy of the statute in erecting this tribunal, by furnishing it. I think there is. It is a universal principle, recognized in England and in this country, that the court to which a writ of error or an appeal is brought is bound to render the judgment which the inferior tribunal should have rendered. Upon this principle, this department may authorize the inhabitants of the district, at a lawful meeting, to raise the additional sum necessary for building a new school-house, that being the judgment or decision which, in the opinion of the Superintendent, the commissioners should have made. I find an order of my immediate predecessor, founded on this principle, and analogous to the one proposed to be made on this appeal, in the case of the trustees of school district No. 30, in Johnstown, in *Common School Decisions*, page 161. The inhabitants of the district had authorized the trustees to make such repairs to the school-house as they should think necessary and proper, and, in pursuance of such authority, they had contracted with a workman to make the repairs, and agreed to pay him \$30. But the district refused to vote more than \$25. On appeal, the Superintendent, Mr. Dix, held that the district was bound to indemnify the trustees; and he ordered that the trustees should make out a tax list for the whole amount and collect it."

In pursuance of this opinion, the district was authorized to raise a tax of \$400, over and above the \$400 which the district could otherwise raise, and the trustees were empowered to levy and collect it. Per Spencer, September 18, 1841.

What questions are to be decided by the department in reviewing the action of local boards altering the boundaries of districts.

In reviewing the action of local boards in altering the boundaries of districts, the department cannot treat the questions as though it had original jurisdiction. The question is not "What would the department have done, had it been called originally to act?" but, rather, "Has the action of the local board been so far a departure from what is legal, consistent or just, as to demand a reversal of its proceedings?" This only is the department called upon to decide. Per E. W. Keyes, Acting Superintendent, May 31, 1861.

An appeal from corrections in a tax list made at the suggestion and desire of the appellant will not be sustained. Tax lists must be made out from the last assessment roll, otherwise they are not valid.

This is an appeal from the acts of the trustees in making out two tax lists, and in proceeding to enforce the collection of the same.

The objection to the first of these tax lists is insufficient to establish its invalidity. The complaint that the trustees corrected it upon his suggestion and at his desire comes with poor grace from the man in whose behalf the corrections were made. The department, therefore, now justifies and approves the amendments complained of.

The objection to the second tax list is that it was made from the assessment rolls of 1859, though at the time the assessment of 1860 was complete, and had been delivered to the supervisor.

This fact, being admitted by the trustees, is fatal to the validity of the tax list, though the trustees acted ignorantly or in good faith. That does not change the question. The statute invests them with no authority to use any other than the last assessment roll, and this department has no power to contravene the provisions of the law. Per H. H. Van Dyck, Superintendent, February 16, 1861.

Appeals should be brought promptly, or it may be too late to apply a remedy.

If it were not that these proceedings had become confirmed by the subsequent action of the trustees, the department would be disposed to exercise its equitable power to prevent their consummation. But by the indiscretion of the appellant in neglecting to bring his appeal at once, the act of that meeting became confirmed, and there is *now* no sufficient justification for interference by this department. Per H. H. Van Dyck, Superintendent, July 26, 1860.

Appeal dismissed on account of defective affidavit.

The evidence to substantiate the allegation in this appeal—that of illegal voting—is far from conclusive. The affidavit offered in evidence is to the effect that the facts stated are true, as far as they are stated within the knowledge of the appellant. But there is nowhere any indication as to what facts are stated upon knowledge, and what upon information and belief, so that I have no guide by which to estimate the value of the testimony.

On this ground the appeal must be dismissed. Per H. H. Van Dyck, Superintendent, March 20, 1860.

Appeal dismissed on ground of vagueness of statement.

The various complaints, and defenses thereto, in this appeal, form a most complicated tissue of crimination and recrimination, without connection, dependence, or logical beginning or sequence. The most I can make of it is that there is an "irrepressible conflict" between two of the trustees on one side, and one trustee and a portion of the inhabitants on the other. After a careful perusal of the many and various documents submitted to this department, designed to give a true exposition of affairs, I am wholly at a loss to gather from them any idea as to the real merits of the controversy. I can do nothing till a clear, connected, and conclusive statement of the facts out of which the controversy grew is made, and the present appeal is, therefore, dismissed. Per H. H. Van Dyck, Superintendent, March 9, 1860.

An appeal from a tax list, on whatever grounds, must be brought before a levy and sale is made, to justify interference of this department.

The facts stated by the appellant and admitted by the trustees constitute a proper ground of appeal, had such action been taken at the proper time. It devolved upon the appellant, as soon as he came to the knowledge of the errors in the tax list set forth by him, to bring his appeal, in order that the trustees might be directed to amend their tax list. Instead of this, he delayed action until the collection of his tax was enforced by levy and sale of his property. For this action, if wrongfully done, there is no remedy but by civil suit. The appellant, by delay, has precluded himself from equity redress.

Had the appeal been brought in due time, the errors complained of would have been corrected; but, as it is, I find no occasion for interference, and the

appeal is, therefore, dismissed. Per E. W. Keyes, Deputy Superintendent, March 6, 1860.

Real parties in interest will be heard upon appeal.

It is ever the policy of this department to arrive at the *facts* of any case presented before it on appeal, and to decide the same according to the merits involved, as appearing from the facts so presented; and, to promote this, the real parties in interest will ever be heard, whether in the petition or appeal they are represented or not. Per H. H. Van Dyck, Superintendent, May 13, 1859.

Appellants must state their case clearly and prove it conclusively in order to justify interference.

On an appeal from various proceedings of the trustees and collector of the district, the only charge made that is, under the circumstances, at all subject to the cognizance of this department, relates to the correctness of the assessment roll or tax list.

The roll in question *may* be right, or may be wrong. Certainly very little light is thrown upon the subject by the evidence on either side. It is not the business of the department to investigate and determine what *may* be the facts, when the evidence is insufficient to indicate them. It is the duty of parties bringing an appeal to make out a case in some clear and definite form, so that it can be distinctly seen what is and what is not proven. In this case, the appellants have failed to do that, and the appeal must, therefore, be dismissed. Per E. W. Keyes, Deputy Superintendent, May 3, 1859.

An appeal will be dismissed for obscurity of statement.

The facts and circumstances of the transaction are so vaguely and clumsily set forth in this appeal that it is impossible to get at the merits of the case.

In bringing appeals to this department, no material facts should be left to be inferred or conjectured.

The present appeal is hereby dismissed for obscurity of statement. Per E. W. Keyes, Deputy Superintendent, May 2, 1859.

Power of the department to grant rehearings in matters of appeal considered.

This is an appeal asking for a rehearing of all matters in controversy in the district that have been brought before this department since March 24, 1857.

The main purpose of this appeal is to secure a rehearing upon the merits of those facts and arguments presented in an appeal to this department which was dismissed December 19, 1857, and by restoring, as far as may be, the condition of things existing at that time, to afford the appellants the relief at that time sought.

At this point we are met by the position of the counsel for the respondents, that this department has no power to grant a rehearing of any matter of appeal, and that, the order of this department dismissing the appeal having been issued, no further action upon the matters embraced in that appeal can be taken.

It would be doing injustice to the able, ingenious and plausible argument of the counsel upon this point, for the department to controvert it simply in action, by granting the rehearing, without any statement of the grounds upon which its conclusions respecting the extent of its rights and powers are based.

First, upon this particular case, it may justly be said that the *decision* of the department upon it was expressed or rendered in the communication to Commissioner Boyce, that embodied the conclusions at which the department had arrived from an examination of the evidence adduced; it is, to all intents and purposes, the decision of the questions at that time pending, and it was proposed, when certain conditions should be reached by the further acts of the parties themselves, to issue an order adapted to the circumstances of the case

at that future time. On information, supposed to be reliable, that the conditions stated had been reached, the order was issued dismissing the appeal; this being done for the sole purpose of enforcing the decision already rendered. The dismissal of the appeal, therefore, was *not the decision of the case*, as appears by its terms, in which it especially disclaims to act upon the questions raised in the controversy, they having been disposed of (as was supposed), according to the terms of the decision rendered by the department. If it be objected that this decision was not in form and under seal, it is sufficient to answer that the statute does not prescribe the manner or form in which these decisions shall be expressed. That is left to the judgment of the department itself. The seal, or other forms commonly attending the rendering of a decision, are proper as evidences to third parties of the authenticity of the proceedings. But they are of no importance to the department itself, which is cognizant, at all times, of its own decisions.

An order of the department may be antecedent or supplementary to a decision, and hence may be continued in force, or vacated at the pleasure of the department. Thus, on an appeal, by inhabitants, from the proceedings of trustees in the matter of paying public moneys to a teacher, it might be necessary to issue an order to the supervisor, directing him to withhold the payment of the moneys of that district until otherwise directed. It will not be held that this order is fixed and cannot be vacated. So, where an order is issued supplementary to a decision, and with a view, or for the purpose, of enforcing its conclusions, if the department shall afterward find that such order is insufficient to accomplish the enforcement of the decision, or, owing to any circumstances of which the department was unaware, is calculated to thwart the ends proposed by the decision to be reached, it is absurd to maintain that such order may not be modified or vacated, and such other order be issued as will conform to the doctrines of the decision rendered.

I come now to a review of the power of the department to grant a rehearing of a case upon its merits, after a decision has once been rendered.

The argument of the counsel was chiefly confined to two points: First, that the power to rehear a matter of appeal, after decision rendered, could only exist by express legislative provision, and, no such power having been conferred by the statute, it, of course, did not exist. Secondly, that the words of the statute, which declare that the "decisions of the department shall be final and conclusive," expressly prohibited the exercise of any such power as is asked by the appellants.

In the decisions referred to by the counsel, I fail to find any cases where the power to rehear a cause upon the merits has been denied, that are at all analogous to the one now presented. In denoting the distinction between a superior and an inferior court—that is, one competent to grant a new trial and one incompetent—the courts say: "We think that a superior court of general jurisdiction must have full cognizance of one at least of the principal departments of the law throughout the State, and must be free, in its primary action, from the control of any other tribunal."

I can conceive of no language that should more clearly describe and designate this department than that above quoted. I can, therefore, draw no other conclusion than that this department is a superior court of general jurisdiction, and hence that to it the decisions relative to the powers of inferior courts do not apply.

But again, in 1 *Johnson's Cases*, 179, which the counsel cited in support of his position, I find the following language: "The power of granting new trials can only be applied in a manner which precludes the possibility of its exercise being reviewed in this or any other court." These are just the circumstances under which this department always exercises this power. And, further, in the same decision, the court says: "Indeed, no inferior jurisdiction can possess this power without express authority," plainly implying that courts of *superior* or *general jurisdiction* may, in the very nature of their organization, possess this power of granting new trials.

It is my conviction, therefore, that the power to grant a new trial of any cause brought before this department on appeal may exist without special legislative designation, being involved in the powers distinctly conferred, and the purposes and objects sought to be accomplished in the organization of this tribunal.

I pass now to consider the second point in the argument of the counsel upon this question of the power of the department to grant a new trial, which is based upon the restrictive terms of the statute itself, which says that "the decision of the State Superintendent shall be final and conclusive."

This language has ever been interpreted as characterizing the exclusiveness of the jurisdiction of this department in matters brought before it for determination, and not as limiting the department itself to a single examination of any cause before it. It was designed as a check against the interference of other authorities with the decisions here rendered, and not as defining or circumscribing the powers of the department itself.

The nature of the trust committed to this department, and the form of procedure necessary for the proper exercise of its powers, preclude the presumption that the Legislature ever intended that the terms "final and conclusive" should bear the construction put upon them by the counsel in this case.

The indication of the exercise of this power by this department to grant new trials is made not essentially to meet the *present case*, but to meet and put at rest, so far as it can be done here, the general issue so strongly raised; and I must and shall assume that the practice of this department, in granting new trials for causes satisfactory to itself, is a legitimate and necessary exercise of powers with which, in the nature of its organization, it is invested. Per H. H. Van Dyck, Superintendent, April 18, 1859.

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## COLLECTOR.

The law has not specified any time within which a warrant for the collection of a tax shall be delivered to the collector.

Where a tax was voted in June, 1841, and the tax list was made out within the time and in the mode required by law, but the warrant for collection was not issued till January 31st, the delay was held not to affect its legality or validity. Per Young, March 21, 1843.

A school district collector's bond requires an internal revenue stamp of one dollar. The collector must file this bond and pay the necessary expense of procuring the bond and stamp. Per V. M. Rice, Superintendent, December, 6, 1865. (*Letters, vol. 4, p. 638.*)

### Jurisdiction of collector.

The jurisdiction of a collector in collecting any tax list delivered to him extends to any part of the county in which his district is situated. (*See sec. 85, title 7, chap. 555, Laws of 1864.*)

Collector must execute to trustees a bond before he can legally enforce the collection of any tax list placed in his hands. He need not give notice to the inhabitants that he has received the warrant from the trustees.

The law makes it the duty of the collector to execute to the trustees a bond before receiving the first warrant for the collection of money. Until he has done this, he cannot legally enforce the collection of any tax placed in his hands, and would render himself liable as a trespasser if he undertook to enforce a collection by levy and sale. The collector is not bound to give notice to the inhabitants that he has received the warrant from the trustees. Per V. M. Rice, Superintendent of Public Instruction, November 13, 1865. (*Letters, vol. 4, p. 503.*)

If a person who is ineligible to the office has been appointed collector, and the tax payers refuse to pay him, he cannot, without rendering himself a trespasser, proceed to collect of such tax payers by levy and sale. A district collector cannot perform his official duties by deputy. Per S. D. Barr, Deputy Superintendent, October 17, 1865. (*Letters, vol. 4, p. 356.*)

The collector by law has no right to pay over moneys except upon the order of trustees. He is, in fact, the treasurer of the district. Per S. D. Barr, Deputy Superintendent, September 5, 1865. (*Letters, vol. 4, p. 232.*)

Collector vacates his office whenever, by leaving the district, he cannot perform collector's duties.

The collector vacates his office whenever, by leaving the district, he is unable to discharge the duties of collector. You may, under the circumstances, regard the office as vacant, and appoint another; it is not necessary to create vacancy that the absence should be permanent.

If it obstructs the business of the office, it is enough. Per E. W. Keyes, Deputy Superintendent, June 26, 1865. (*Letters, vol. 4, p. 135.*)

The collector is not required by law to give any notice whatever that he has a tax list; hence, he is entitled to five per cent after he has had the warrant two weeks, though no notice has been given. Per E. W. Keyes, Deputy Superintendent, December 1, 1864. (*Letters, vol. 3, p. 496.*)

The statute prescribes no limit within which the second renewal must be made. Hence, though three months have elapsed since the first renewal, the warrant is still renewable with the consent of the supervisor. Per E. W. Keyes, June 1, 1864. (*Letters, vol. 3, p. 207.*)

Collector responsible for losses through neglect.

A collector is responsible for all losses to the district occasioned by his neglect of duty, and may be prosecuted for the same at any time within six years. Per V. M. Rice, Superintendent, June 15, 1854. (*Letters, vol. 1, p. 172.*)

Trustees not bound to indemnify collector.

The trustees are not bound to indemnify the collector on a levy and sale of property on a tax list. If they do so, however, and the collector is sued, they are responsible for the costs, and must present their account to the board of supervisors (county judge) in the mode prescribed by law.

Where money is advanced by trustees to a teacher for his wages, the amount so advanced may be collected in the usual form, and paid over to the trustees so advancing, on the order or receipt of the teacher.

If, after due diligence on the part of the collector, a deficiency exists in the collection of a tax list, the trustees may advance the amount of such deficiency, and the district will be bound to provide for the same by tax, in the same manner as though no such tax had been made. Per V. M. Rice, Superintendent, May 11, 1854. (*Letters, vol. 1, p. 86.*)

The refusal of a district collector to serve vacates his office.

In case of a refusal to serve, on the part of the collector, a vacancy is created in the office by that act, which may be filled by appointment by the trustees. Per V. M. Rice, Superintendent, April 10, 1854. (*Letters, vol. 1, p. 3.*)

Where a collector cannot perform his duties from sickness or otherwise, trustees must appoint.

When a district collector is unable from illness or other cause to perform his duties, the trustees must appoint another in his place, who will be entitled to hold the office for the remainder of the school year. Per S. S. Randall, Deputy Superintendent, April 19, 1854. (*Letters, vol. 1, p. 34.*)



Under no circumstances is a collector authorized to sell real estate. If he cannot levy on enough personal property at one time to satisfy the warrant which he holds, he can keep on levying till he *does* obtain property enough to pay the tax. Per V. M. Rice, Superintendent, April 23, 1866. (*Letters*, vol. 5, p. 329.)

Collectors the proper custodians of district moneys, and they need not pay them over to trustees. They should pay only on the written order of one trustee, or a majority of the trustees, which order should state the purpose for which the money is to be paid.

Collectors are now the proper custodians of all the district moneys collected by tax, and it is not their duty to pay over such moneys to the trustee. They are to pay it out only on the written order of the trustee, or of a majority of the trustees, which order must specify for what purpose the money is to be paid. Per V. M. Rice, Superintendent of Public Instruction, April 12, 1866. (*Letters*, vol. 5, p. 202.)

Trustees must require a bond of collector for the faithful discharge of his duties, etc., before collector receives first warrant for collection of district tax. If they neglect such requirement, said trustees are liable to district for any loss or damage resulting from their neglect.

The law makes it the duty of the trustees to require the collector, before receiving the first warrant for the collection of a district tax, to give bonds for the faithful discharge of his duties, and accounting for the moneys received by him by virtue of such warrant. A failure to comply with this direct requirement of the law on the part of the trustees, would, in my opinion, constitute such a case of non-feasance as would render the trustees liable to the district for any loss or damage resulting from their neglect. Per V. M. Rice, Superintendent of Public Instruction, December 28, 1865. (*Letters*, vol. 5, p. 13.)

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## SCHOOL COMMISSIONERS — CLERK OF DISTRICT.

There is no law requiring a school commissioner to be a resident of the district which elects him. Per V. M. Rice, Superintendent, October 19, 1866. (*Letters*, vol. 5, p. 647.)

Commissioners cannot declare void proceedings of their predecessors, though they may annul or rescind them.

The town superintendents of the towns of Seneca, Gorham and Benton, declared illegal the proceedings of a previous board, forming district number thirteen, from parts of the said three towns, for an alleged want of authority. The district, if legally organized, might have been annulled, but they had not power to declare void the proceedings of their predecessors. The law confers no such power upon them. The question of illegality must be referred to the Superintendent of Public Instruction, or determined by some other competent tribunal. Per Dix, August 19, 1837.

Superintendent must have evidence of the appointment of a school commissioner before he can receive his salary.

Before the Superintendent can certify to the State Treasurer that A. is a school commissioner, he must have some evidence of his appointment. He should have the order of the county judge appointing him filed in the office of the county clerk of the county, and a certificate of that fact forwarded by the county clerk to the Secretary of State and the Superintendent of Public Instruction. Per V. M. Rice, Superintendent of Public Instruction, March 29, 1866. (*Letters*, vol. 5, p. 250.)

Only two cases in which a district clerk can lawfully call a special meeting except on order of trustees: First, where time for annual meeting has passed without any such meeting being held; and, second, where all the trustees have vacated their office.

There are only two cases in which a district clerk is authorized by law to call a special meeting except on the order of the trustees: First, where the time for holding the annual meeting has passed without any such meeting having been held; and, secondly, where all the trustees have vacated their office. In these two cases the district clerk is authorized to call special meetings, and in no others.

Where neither of these contingencies arise in a district, the clerk has no more legal authority for calling a special meeting, except by order of the trustees, than any other inhabitant of the district. Per V. M. Rice, Superintendent of Public Instruction, November 20, 1865. (*Letters*, vol. 4, p. 535.)

The clerk should keep a record of every thing that is done by a meeting, and his minutes should show what resolutions were rejected, as well as those that were carried. Per S. D. Barr, Deputy Superintendent, June 22, 1866. (*Letters*, vol. 5, p. 476.)

Duty of clerk to notify every person of his election, even though he were present. Collector must give a *bond*, however responsible he may be. He cannot enforce collection without a bond.

It is the duty of the clerk to notify every person of his election, no matter if he were present.

The collector *must* give a *bond*, no matter how responsible he is. He cannot enforce collection without a bond.

The trustee has no right to receive money on a tax list, and, if he does so, the collector is entitled to his fees upon it the same as if collected by himself. Per E. W. Keyes, Deputy Superintendent, etc., May 11, 1865. (*Letters*, vol. 4, p. 76.)

## COLORED CHILDREN.

Colored children are entitled to attend the common schools in this State, in all districts, except those in which, by law, provision is made for their education in separate schools.

The petition of appeal in this case states, as the ground of appeal, that the trustees came to the school-house and ordered a certain colored lad commonly called "Dick," to leave the school. The petition alleges that said "Dick" was, at the time, over five and under twenty-one years of age, and was of the age of fourteen or fifteen years; and that he was an actual resident of the district, and has for the last two years been included, by the trustees of the district, in the enumeration of the children made in their annual report to the school commissioner. These facts would give him the right to attend the district school, while the trustees would also have the right to expel him from the school for any good cause shown. The appellant alleges that "the trustees gave 'Dick' no reason for his expulsion, except that, if he continued to go to school, the school would be broken up," and he also alleges that after the dismissal of "Dick" from school, the teacher said to appellant that "Dick" had been an orderly scholar, and had not disobeyed the rules or orders of the school.

The only allegations in the answer which may be considered as contradicting these, are, in the language of the respondent, as follows, viz.: "On the morning of the 1st day of December, 1865, the teacher dismissed school on account of disturbance caused, as the teacher declared, and as the trustees verily believe, on account of said colored boy being in school; and on the 4th day of December, 1865, the teacher commenced school again, and the trustees did then and

there dismiss the said colored boy from school, and at the time did assign to him the reason why they so dismissed him; and that, on the 11th day of December, 1865, the said colored boy went to school, and on the same day the above named John Skatts and William R. Parker, went to the school-house and dismissed the said colored boy again for the same reason, and told him that he could not come to school until the weather was settled; that they dismissed him because he was offensive and a laughing stock for the scholars, both in and out of school; and that his presence there did annoy and disturb the school to such an extent that the teacher could not preserve or keep order."

These are all the facts of any consequence alleged in the case.

It is, therefore, admitted by the respondents, that "Dick" was primarily entitled to attend the school, being a resident and of school age; and that he was expelled because "his *presence* did annoy and disturb the school to such an extent that the teacher could not preserve or keep order." I know no law of this State, or decision, excluding a pupil from a public school merely because his *presence* annoys and disturbs the school. If he had the small-pox, or some other dangerous and contagious disease, the presence of such disease would be dangerous to the school, and the disease might legally be removed by removing the pupil. But no such complaint is made of "Dick," and the presumption is that he is a strong, healthy, intelligent boy.

But the respondents allege that he "was offensive and a laughing stock for the scholars." It is not alleged that he actively engaged in any offensive operations at school, to the injury of the scholars. Therefore, the cause of his offense, if there was any cause, must have been that he was "colored," or in some other respect, was not by his Creator so made as to be adapted to the tastes of his school-fellows, or that his tailor was at fault. The offense was committed by those who made sport of him. They ought to have been taught better manners. The mere fact that "Dick" was "a laughing stock for the scholars" is not a just ground of punishment or censure to be visited upon him, but may be the result of the highest virtues, the noblest purposes, and the most commendable action in *him*.

In the absence of evidence to the contrary, such is presumed to have been the case, in view of the allegations of the appellant, "that, when the colored lad returned to school on the 11th day of December, other boys in school hours annoyed him with opprobrious looks and actions." There is no allegation in the answer, that "Dick" has ever, on any occasion, in school or out of school, acted in a manner unbecoming a high-minded, earnest boy. For *such* boys this great State has, by the labors and the money of a willing people, organized and sustained a beneficent common school system, and has designed thus to extend a protecting and guiding hand to them, and by these means to bless and exalt all her children.

The trustees of said school district number twenty-one and eleven, in the towns of Darien and Alexander, in the county of Genesee, are, therefore, hereby ordered forthwith to admit said colored lad "Dick" to all the privileges of said district school. Per V. M. Rice, December 21, 1865.

Colored children cannot be excluded from the common schools unless a separate school for their education has been organized by the district.

The law provides that the "common schools in the several school districts in this State shall be free to *all persons* over five and under twenty-one years of age residing in the district."

The only restrictions to this provision are in the case of Indian children residing in the district, who are admissible only by authority of the Superintendent, and in such cities and union free school districts as have made provision for the maintenance and support of separate schools for colored children.

It would manifestly be a great injustice to exclude from the common schools a class of children merely on account of their color, without having made adequate provision for their education elsewhere. Per V. M. Rice, Superintendent of Public Instruction, December 7, 1865. (*Letters*, vol. 4, p. 647.)

Negro children should be admitted to district schools, where no separate school for them has been established by district.

Negro children are entitled to all the advantages of education provided by the State the same as white children. Cities and union free school districts, incorporated by special act of the Legislature, have it in their power to establish separate schools for colored children; but, in all other districts, and in those mentioned where no separate school has been established, colored children should be admitted to the district school. Per V. M. Rice, Superintendent, November 23, 1865. (*Letters, vol. 4, p. 553.*)

Trustees have no right nor authority by law to exclude colored children from district school, except they maintain a "school for colored children."

The trustees have no right or power under authority of any law, even though they have been so instructed by a district school meeting, to exclude colored children from the district school, unless they maintain a "school for colored children." Per S. D. Barr, Deputy Superintendent, September 27, 1865. (*Letters, vol. 4, p. 281.*)

## ELECTION OF OFFICERS.

An adjourned meeting cannot rescind an election of district officers. Per Dix, November 18, 1837.

Nor can an officer, once elected, be displaced by vote of district. Per Dix, November 9, 1838.

Any district meeting may elect an officer to fill an existing vacancy, although thirty days may have elapsed since its occurrence.

The appeal was served June 11, 1856, upon R. S. Scott, town superintendent, and no answer has been made. It appears that Alexander Fenton, a trustee in joint district No. 9, in Middletown and Shandaken, removed therefrom about the first of April, 1856. On the twenty-eighth day of May, 1856, a special meeting was held, at which William Jones was chosen to fill the vacancy. The town superintendent, with a full knowledge of such election, appointed John Newton to fill the vacancy caused by the removal of Fenton.

The inhabitants, when lawfully assembled at any district meeting, may choose district officers to fill vacancies. (*Sec. 62, chap. 480. Laws of 1847.*)

By section 77, it is provided that in case a vacancy shall not be supplied by a district meeting within one month thereafter, the superintendent of the town may appoint any person residing in such district to supply such vacancy. This provision does not, however, in any way affect the right of the district to supply such vacancy by election, at any period prior to an appointment made by the town superintendent.

In this case, Mr. William Jones having been elected at a special meeting of the inhabitants of the district, previous to the appointment of Mr. Newton, the action must be considered legal.

The order of the town superintendent of district No. 9, Middletown and Shandaken, is therefore void. Per V. M. Rice, July 31, 1856.

School district officers cannot be elected by a *plurality* vote. The statute requires a *majority* to elect.

The statute does not authorize an election by a plurality vote, but expressly names a majority as essential. This removes it from the power of the district even to make valid an election by a plurality. Per H. H. Van Dyck, Superintendent, December 2, 1858.

Evidence of a mere *possibility* of an election having been carried by illegal votes will not vitiate the election.

On an appeal from an election for a member of board of education, it appears that 585 votes were cast at said election, of which J. S. received the greater number, and was declared duly elected. The appellant alleges that of the votes cast, 133 were illegal, thus reducing the whole number to 452, of which he produces affidavits to show that he received 253, and is therefore entitled to the office.

Of the 133 votes claimed to be illegal, it is claimed that ten had not the requisite property qualification; seven appear upon the poll books as having voted twice; one voted as proxy for another voter, and eleven were aliens, and not entitled to hold lands in this State. The remainder, 104, it is alleged, were non-residents of the district at the time of the election.

Counter affidavits are introduced that prove the allegations concerning the property qualifications, the duplicate voters and the aliens, to be, in some instances, erroneous. This tends, of course, greatly to cast discredit upon the affidavits not controverted, where those affidavits are general and indefinitely stated on knowledge or belief.

But the burden of testimony is that relating to the 104 voters claimed as non-residents. The nature of the evidence to prove the non-residence of these voters is far from being satisfactory. An old resident and late collector of the district makes out a list of all those in said district whom he regards as voters. From this list the 104 persons referred to are excluded as not known to the deponent as residents of the district. Two others swear, on information and belief, to the accuracy of said list, as embracing all the legal voters in said district.

This testimony certainly casts a suspicion upon the validity of the votes cast by those persons; but it is *only* a suspicion after all; it is not conclusive. The appellant has only proved the *possibility* that the election was carried by illegal votes.

I cannot but regard the evidence as to the illegality of these votes as inconclusive, and the result of the election, as declared by the inspectors, is not thereby impaired.

The appeal is therefore dismissed. Per H. H. Van Dyck, Superintendent, December 3, 1860.

#### Legality of proceedings in certain elections for trustees considered and decided.

At the annual meeting in 1859 it was resolved to elect three trustees for the district. The meeting proceeded to elect R. H. as trustee, but without designating his term. Before proceeding to elect the other trustees, the meeting adjourned.

The said R. H., acting under color of an election as trustee, ordered a special meeting for the purpose of filling vacancies in the district. The meeting was held and proceeded to vote for a trustee for three years, and a ballot was had, in which J. K. received a majority of the votes. Before proceeding to the election of other officers, the meeting again adjourned. Another special meeting was called to fill the vacancy still existing, at which G. H. was elected for one year, T. R. for two years and the said R. H. for three years.

The proceeding of the first special meeting to vote for a trustee for three years I must regard as a substantial compliance with the statute, and therefore declare the election of J. K. as trustee for three years to be legal and valid.

The election of R. H. for three years at the second special meeting was void under the decision already given, there being, at the time, no such vacancy. His election at the annual meeting I hold void for uncertainty, the time for which he was elected not being specified.

The election of G. H. for one year, and T. R. for two years, at the second special meeting, was valid. Per H. H. Van Dyck, Superintendent, February 9, 1860.

Conditions and tenure of office of trustees elected at meetings not called or held according to law, commented upon.

By an act of the Legislature, the first Tuesday in May was designated as the day for holding the annual meeting of the school district, and the meetings were held on this day for about thirty years. In 1851, a resolution was passed at the annual meeting, changing the time of holding the annual meeting of the trustees and inhabitants of such school district, from the first Tuesday in May to the first Tuesday in September of each year.

This action of the district I must regard as wholly unauthorized and void, it not being among the powers conferred upon the inhabitants of that district, but expressly taken from them by the provisions of their charter, which designated the first Tuesday in May as the time for holding such annual meeting. It follows, therefore, that no legal annual meeting has been held in that district since the time of holding the meeting was changed to the first Tuesday in September, by vote of the inhabitants.

The important question hereupon arises: Does this informality render all the proceedings in the said district void? To reply affirmatively would be to utter a most disastrous and sweeping decree, nullifying nearly all that has been done in the way of raising and applying money for school purposes since 1851. The district might thus be shown to be destitute of a site, or of a house, and that all that had been done in the assessment and collection of taxes for school purposes, had been done in derogation of the rights of the inhabitants—having been done without authority and against law. But, aside from the consequences of such a decision, there is nothing in the nature of things, nor in the just rules applicable to such cases, to lead to such a conclusion.

The meetings held on the first Tuesday of September in each year were *informal*, being, in point of fact, *special* meetings, held under insufficient notice. The special meetings called by the trustees of the district were legal, and any business transacted at them must be considered valid. The informality attending the so-called annual meetings would have this effect, that the proceedings would all be voidable; that they might be set aside on appeal, or a subsequent annual meeting held in May, agreeably to the statute, might disregard them in so far as they assumed the prerogatives belonging to itself. But until such action has been held, whereby the powers of those meetings have been brought into question, and their proceedings superseded by competent and legal authority, their action must be approved.

The effect of the informality practiced in this district, upon the tenure of those now holding office by virtue of an election at any of the annual or special meetings I am now considering, appears to be this: That those elected at any such alleged annual meeting are liable to be displaced and superseded at any subsequent regular and legal annual or special meeting, while those elected at any *special* meeting, for terms clearly defined, and for vacancies which the district were competent to fill at the time, could *not* be superseded at any subsequent meeting previous to the expiration of the term for which they were elected. Per H. H. Van Dyck, Superintendent, December 21, 1858.

## FORMATION AND ALTERATION OF DISTRICTS.

A conditional consent to the alteration of a district cannot be given. The trustees must either give or withhold their consent. They can annex no conditions. Per Spencer, April 12, 1841.

The department of Public Instruction, in the formation and alteration of school districts, acts upon one uniform rule, never (except in certain special cases and for the most urgent reasons) to permit new districts to be formed with a less number of children between the ages of five and sixteen years than from thirty-five to forty, and never to countenance or sanction changes or

alterations of districts which shall reduce the number of school children in a district below what has been found, from practical experience, would afford an average attendance sufficient to give full employment to a competent teacher. Per N. S. Benton, June 30, 1847.

The establishment of a district by a decision upon appeal to the department is final and conclusive; and the district is not subject to alteration by the local authorities while the circumstances remain unchanged. But it is absurd to contend that, when the circumstances under which a decision is pronounced have materially changed, and after the districts, or either of them, have increased or diminished in territory, number or valuation, the local authorities are precluded from interference, by the conclusive operation of a decision founded on an entirely different state of facts. Such a doctrine would be entirely inconsistent with reason and good sense. Per Spencer, September 24, 1840.

The dissolution or annulling of a district is not an alteration.

When an alteration is made, the presumption arises that something of the original remains. Its total destruction precludes such a presumption.

Under the Constitution of 1822, the Legislature could not pass any law creating, continuing, *altering* or renewing any body politic or corporate without a vote of two-thirds in its favor.

The Legislature repeatedly passed laws repealing charters, on the ground that a repeal was not an alteration, and that such repeal did not come within the *spirit* of the provision, any more than it did within its *letter*. Per Spencer, July 26, 1839.

A supervisor and town clerk cannot act in the formation or alteration of a school district without the presence of the town superintendent (school commissioner).

The appellants in this case seek to set aside an order made at a meeting of the town superintendent of Jefferson, and the supervisors and town clerks of Blenheim and Jefferson, on the 30th day of April last, forming a new district, to be composed of parts of districts No. 6, Jefferson, and No. 3, Blenheim.

From an examination of the papers, I am of the opinion there is a fatal objection to this order.

It appears that the town superintendent of Blenheim was not present at the meeting of the board, and did not participate in making the order. The supervisor and town clerk of that town were members of the board, but they had no authority to act without the presence of the town superintendent. The statute authorizes them to be associated with him in forming or altering school districts. In no case, however, does it authorize them to act without him. The board, therefore, had no power to alter any district located in that town.

The order, therefore, is hereby set aside. Per H. S. Randall, August 18, 1853.

A school district cannot be formed out of the central portion of another district, leaving the territory of the latter disconnected.

This is an appeal from the order of the town superintendent of Fremont, Sullivan county, creating a new district (No. 6) from territory now known as district No. 5 of said town.

The appellants raise the following point:

Said order of the town superintendent erects a new district (No. 6) in the central portion of district No. 5, thus disjoining the parts of said district No. 5.

The question to be considered is: Can a district be formed out of the central portion of another district, leaving the former disjointed? The answer is clearly in the negative, as has been the uniform ruling of this department. (See *Common School Decisions*, p. 109.) In the case there cited, Superintendent Dix properly remarks that school districts must be formed of contiguous farms. If the example of forming them of farms not adjacent to each other should be sanctioned, it is difficult to foresee what disorder and confusion it might not create, besides opening a door to unequal and unjust organizations.

It is, therefore, decided that the order of the town superintendent, as hereinbefore recited, is illegal, and the same is hereby set aside. Per V. M. Rice, September 18, 1854.

It is the settled policy of the Department of Public Instruction to favor the consolidation of weak and inefficient districts.

The town superintendent of Independence, Allegany county, had consolidated two weak and inefficient districts, Nos. 7 and 11. Upon an appeal to the county superintendent, he reversed the order of the town superintendent, upon the sole ground that it was, apparently, the only means of putting an end to the quarrels and dissensions that had unhappily arisen in the consolidated district. The county superintendent, at the same time, admitted that the organization, as made by the town superintendent, was "the most judicious one that could be entered into under existing circumstances," and that, although not perfect, "it was the best that could be made until the population of the neighborhood becomes more dense."

The State Superintendent reversed the decision of the county superintendent and confirmed the order of the town superintendent, strongly reprehending the bad policy of re-establishing two weak and inefficient districts, obviously incapable of maintaining an adequate organization. Per Young, December 20, 1844.

Where inhabitants have been properly set off from one district to another, and the town clerk has omitted to record the order, they will be regarded as inhabitants of the district to which they have been annexed after it has been acquiesced in for five years.

This is an appeal from the proceedings of a special meeting held on the 28th of March last, authorizing the trustees to levy a tax on the district to defray the expense of moving the school-house to the new site or to let the job of moving the same to the lowest bidder.

The appellants, in support of the appeal, allege that seven persons, who attended the meeting and voted, were not inhabitants of and legal voters in said district, having been annexed in 1839 to joint district No. 1, Blenheim and Fulton, and there being no record in the town clerk's office of either of said towns of their subsequent transfer, either to district No. 5 or any other district.

In reply to this allegation, the affidavits of the town superintendents of Fulton and Blenheim for the year 1849 are produced, showing that the individuals referred to and their property were, in the spring of that year, transferred by them from joint district No. 1 to district No. 5, and that the order made by them to that effect was transmitted or delivered to the town clerks of their respective towns for record. It also appears, from the affidavit of the appellants that, from that period to the present, the persons so transferred have acted in and been regarded as inhabitants of district No. 5, and their children enumerated therein. Under these circumstances, and after an acquiescence of five years, the proof of such transfer must be regarded as sufficient, notwithstanding the omission of the town clerks to record the same. Per V. M. Rice, May 12, 1854.

An order, issued by a commissioner, altering a district, which does not recite the consent or refusal of the trustees of the affected district, is absolutely void, *ab initio*. Per S. D. Barr, Deputy Superintendent, etc., June 27, 1866. (*Letters*, vol. 5, p. 483.)

Town superintendents (school commissioners) should always give notice to the trustees of their intention to consider any proposed alteration of their district, so that they may have an opportunity of associating with them the supervisor and town clerk.

On the fourth day of April, 1855, the appellees made an order for altering the district by setting off all that portion situated in the town of Independence, without obtaining the consent, or giving notice to, the trustees. The original order stated that it was to take effect on the first day of May, but in the copy served on the appellant this provision was omitted.



The district was established upon an appeal by the State Superintendent in 1844, and no permission was obtained for its alteration. No answer is put in by the town superintendent.

Without considering the expediency of the order, it is sufficient for the decision of the case that the proceedings are entirely irregular. The order could not take effect until three months after service of notice thereof upon the trustees of the several districts affected by the same, except by their assent duly obtained to its provisions.

The appellant is correct in believing that town superintendents should always give notice of their intention to consider a proposed alteration, so that the trustees may have the opportunity of associating the supervisor and town clerk in the proceedings, and of urging their own objections; Superintendent Benton declares that an omission in this respect renders the order void.

The appeal is, therefore, sustained, and the order of the town superintendent vacated. Per V. M. Rice, May 28, 1855.

The statute authorizes the association of the town clerk and supervisor with the town superintendent (school commissioner), upon the application of the trustees of any district to be affected by their action.

If only one trustee make such application, such board does not obtain jurisdiction of the subject-matter; the application of a majority or all of such trustees is necessary.

In this case, districts situated in both towns being affected by the proposed order, a single trustee of district No. 2, in Halfmoon, and of joint districts Nos. 8 and 18, in Halfmoon and Waterford, applied to the supervisors and town clerks of the two towns to be associated with the superintendents in their deliberations. The order was made by this board, thus assembled, and the answer sustaining and defending it is signed by every member.

The appellants insist that the board was entirely destitute of jurisdiction. The statute authorizes the association of the town clerks and supervisors with the town superintendents only upon application of the trustees of any district to be affected by the proposed action. If a majority of the trustees of any one district make the application, it cannot be doubted that jurisdiction is given as to all; in this case, however, a majority of the trustees of no district made the application, and the supervisors and town clerks, composing a majority of the board, had no authority whatever in the premises.

Considerable research has failed to discover any adjudged case in which the precise point here presented has been determined. It is, however, believed to be impossible, in accordance with general principles, to sustain an order made by a tribunal which, in its constitution as a whole, has no jurisdiction, although including persons, as in the case of the two town superintendents, who, acting alone by themselves, would have possessed the requisite authority, and, although these persons all concur in the order, and nothing appears showing that their judgment was in any degree controlled, or their deliberations affected, by the presence of third parties.

The difficulty is, that it must always be practically impossible to ascertain whether the decision is, in fact, the unbiased judgment of those to whom the duty of making it has been committed by law. It may be said that a judicial officer is not only blameless but praiseworthy for seeking to enlighten his own mind by the suggestions of disinterested and intelligent advisers. There is a manifest difference, however, between his voluntary application, which is consistent with that judicial independence which it is so important to preserve, and his being subjected to the influence of persons claiming to deliberate with him as a matter of right. It is, moreover, an element in the policy of the law, that all persons required to exercise judgment for the public good should be held to an individual responsibility, and not be permitted to diminish it by distributing a part of the burden among others.

The appeal is sustained. Per V. M. Rice, July 14, 1855.

Town superintendents (school commissioners) have no authority to alter the boundaries of a school district, if the same have been established by this department upon appeal, until after the lapse of three years from the time they were so established, without express permission of the State Superintendent.

The appellants, in making their annual report, enumerated, among the children of their district, the five children of Mr. William Raynor. In making his apportionment, the town superintendent deducted these children from the enumeration of district No. 23, on the ground that they and their father were residents of the adjoining district, No. 21. The trustees of the latter district answer the appeal.

It appears from the evidence that the farm of Mr. Raynor was taken from district No. 23, some five or six years since, and annexed to district No. 21, by an order of the town superintendent, that officer not being aware that the line between the said districts had been established in 1830, by the State Superintendent, upon appeal.

It has been held that town superintendents have no power to alter the boundaries of a school district, if the same have been established by this department, upon appeal, unless consent shall have been previously given by the State Superintendent for such alteration. This rule was established to prevent the decisions of the department from being deprived of any practical effect, as might be the case if, immediately after the decision, a new order could be made precisely or substantially similar to the one which has been set aside.

This reason fails, however, when lapse of time and a consequent change of circumstances may have made the reasons no longer applicable which controlled the decision. As this is a subject of regulation, it will hereafter be held that, after a lapse of three years from the time when the boundary of a district shall have been established by this department, upon appeal, it shall no longer be requisite to apply for express permission of the State Superintendent to authorize a local officer to make an alteration of the same.

In the case under consideration, the appeal should be sustained, without reference to the above mentioned objection. It is the duty of the town superintendent to apportion the public money according to the number of children in the several districts "as the same shall have appeared from the last annual reports of the trustees," and not otherwise. If he deems the report incorrect, it is proper for him to call upon the trustees to correct it, and if they refuse to do so, they may, perhaps, render themselves liable to the penalty imposed for willfully signing a false report, with the intention of causing the town superintendent to apportion and pay to their district a larger sum than its just proportion of the school moneys of the town. The report, however, is conclusive until it shall be amended by the trustees, or the question be determined on appeal. Per V. M. Rice, May 12, 1855.

The Superintendent of Public Instruction will reverse an order of a town superintendent (school commissioner) annexing one district to another, where the inhabitants of either are opposed to the union, and have sufficient means for the support of a school, it being an abuse of his discretion.

This is an appeal from an order of the county superintendent of Greene county, who confirmed the proceedings of a town superintendent of the 28th June last, uniting districts Nos. 2 and 19 of the town of Catskill. The county superintendent sustained the order of the town superintendent and dismissed the appeal. From this decision this appeal is brought.

From a careful examination of the papers in the case, the superintendent is compelled to differ in opinion with the county superintendent and town board, by whose order the union of districts Nos. 2 and 19 has been effected. It appears that sufficient importance has not been given to the facts that the inhabitants of district No. 2 almost unanimously remonstrated against the proposed union; that they have every necessary facility within themselves, as at present organized, to sustain a good school; that, for several years past, they have done so, and that they do not need any accession of territory, taxable property or inhab-

itants; that district No. 19, so far as wealth and children of the proper age to attend school are concerned, is far more able to keep up an efficient organization than district No. 2; and that the failure of the inhabitants in district 19, under such circumstances, even to procure a school-house, so far from entitling them to special consideration, ought, upon every principle, to operate adversely to their claim. Doubtless the union of two districts contiguously situated, and together occupying a small area, would prove mutually advantageous, provided such union could be effected by the general consent and co-operation of the inhabitants interested. But, in the absence of such consent, and especially in the face of a determined and unanimous opposition to such an arrangement on the part of one of the districts proposed to be united, a consolidation could, in the judgment of the department, only prove detrimental to the cause of education, and subversive of the best interests of all concerned. No good reason can be perceived why the inhabitants of district No. 19 should not promptly avail themselves of the ample means at their command, to organize and efficiently sustain a school of the highest grade of excellence, instead of permitting their territory to be parceled out into private and select schools. They do not need the aid of district No. 2, in order to the accomplishment of this object. The decision of the county superintendent is hereby reversed. Per Young, August, 1843.

Trustees cannot give notice for themselves, and receive it for the district as trustees, of an application to be set off to another district, and assent to being set off in their official capacity. They cannot act in a twofold capacity.

The appellants state that two of the trustees of their district made application to the town superintendent, without giving notice to their colleague, that their own lands might be set off to district No. 5, and that upon that application, without consent of the other trustee, the order was made setting off one of them, Mr. Southworth. It does not appear, although it may be surmised, that Mr. Ellis is the other trustee thus applying. If such was the fact, there would be no notice, in a proper sense, to any trustee of the district. When they applied to be separated, it was in their individual capacity and not in their official character.

They were acting *prima facie*, not in behalf of but against the district; applying as private individuals to be set off, and assenting to being set off in the capacity of representatives of a constituency that may, if the practice should be tolerated, be without an opportunity of opposing. It follows, therefore, that notice to them has no effect whatever upon the rights of the district. There is no evidence in this case that any written notice of the order has been served upon the third trustee, or in fact upon any trustee. The contrary is to be presumed, from the fact that one of the answers sets up their application and consent as dispensing with such notice. The order, then, has not taken effect.

There exists a manifest objection to impairing the resources of a feeble district to swell those of one relatively stronger, and it is against the settled ruling of this department.

The appeal is, therefore, sustained. Per E. P. Smith, Deputy Superintendent, July 19, 1855.

The town clerk and supervisor have no power to review an order to alter a school district.

The town superintendent of Bolton had divided district No. 5, in said town, without the consent of the trustees. The latter applied to the town clerk and supervisor to review the order for such division, and from their refusal brought an appeal to the Superintendent of Public Instruction.

The supervisor and town clerk were correct in holding that they had no jurisdiction to review an order made by the town superintendent. The statute provides that these officers may, upon application of the trustees, associate themselves with the superintendent in determining upon a proposed alteration of a school district. It is implied, from this provision, that the trustees ought

to have such notice of a contemplated alteration as would enable them to exercise their right in this respect. The statute, however, does not prescribe such notice or regulate the manner in which it shall be given; in fact, the trustees might themselves desire an alteration which they knew the superintendent to regard as inexpedient, and it is obvious that, in such case, it would devolve upon them to give notice to him and not to expect one. The spirit of the statute is satisfied whenever it appears in any way that the trustees have had the opportunity of availing themselves of the counsel of the supervisor and clerk, instead of trusting the matter to the unaided judgment of the superintendent.

In this case it clearly appears, indeed, it is not denied, that, previous to the making of the order in question, the supervisor, town clerk and superintendent were assembled upon an informal call of the inhabitants to consider the subject of an alteration; that the trustees were present and had their attention distinctly called to the fact that the town clerk and supervisor could act only on their application, and that they stood mute. The objection comes with an exceedingly bad grace from them, that they have been deprived of the opportunity to do that which they had refused to do when it was in their power. It is entitled to no weight whatever. Per V. M. Rice, December 1, 1855.

A commissioner having made an order altering a district, and the trustees dissenting, and asking the town clerk and supervisor to be associated with the commissioner, in a review of the case two adjournments were had, and the commissioner made an order confirming his first order, without waiting for the second meeting: *held*, that his order was void.

On the thirtieth of November, 1866, the commissioner issued an order changing the boundary lines of school districts Nos. 2 and 3, of the town of Kinderhook, by setting off the farm owned and occupied by Edward Ponkman from said district No. 2, to said district No. 3. The trustees of district No. 2 dissented, and the commissioner directed that the order should not take effect until March 15, and appointed a day when he would meet with the dissenting trustees, and hear and determine their objections to said order, the trustees requesting the town clerk and supervisor to associate themselves with the commissioner on such hearing. On the day appointed, as above stated, only the commissioner and town clerk were present, whereupon, without hearing or deciding the matter, an adjournment was effected to the twenty-fourth of December. On the twenty-fourth of December the boards again met, all the members being present. After hearing the statements of both parties, the supervisor and town clerk voted to adjourn to the twenty-ninth of December, for the purpose of taking measurements, etc. Immediately after this resolution to adjourn, the commissioner, without further consultation with the supervisor or town clerk, issued an order confirming the previous order, the supervisor and town clerk protesting against his action. It is evident that if the board had power to adjourn in the first instance, it had also power, by the vote of a majority of its members, to adjourn the second time. Granting, for the sake of argument, that the board has power to adjourn, then the order issued by the commissioner after an adjournment had been effected, confirming his previous order, was void. But if these boards have no power to adjourn, then the commissioner's order is void, because it was not issued on the day appointed, in the first instance, for hearing and determining objections to the original order.

Whichever view of the case is taken, it is clear that the commissioner's order is invalid.

On examining the affidavits of the trustees of district No. 2, and of the supervisor and town clerk of Kinderhook, as well as the map of the two districts submitted with the appeal, I am satisfied that this order, aside from any technical irregularities, ought not to stand. For the reasons and on account of the irregularities first mentioned, it is hereby decided that the order issued by the said school commissioner on the twenty-fourth day of December, 1866, as aforesaid, altering the boundaries of school districts Nos. 2 and 3, of said town is void and of no effect whatever. Per V. M. Rice, March 11, 1867.

A commissioner having fixed the date when an order for the alteration of a district shall take effect, cannot, by a subsequent order, extend the time.

When a commissioner appoints a meeting of the supervisor and town clerk for the purpose of conferring or rejecting an order to alter a district for a day subsequent to the date fixed for said order to take effect, and, on said subsequent day, confirms his first order, his last order and all his proceedings are null and void.

On the first day of December, 1866, the commissioner issued an order making alterations in district No. 11, and certain other school districts mentioned therein, directing that the same should not take effect as to dissenting school districts (among which was said district No. 11) until March 1, and giving notice to the trustees of affected districts of a time and place when and where he would hear and determine objections to said order.

At the appointed time and place the appellant was present, but the commissioner failed to appear. Subsequently he served upon appellant a notice appointing another day for the purposes above mentioned, but upon that day, as upon the day previously appointed, the commissioner did not appear, although said trustee was present. Supposing that, from his failure to appear, the commissioner had determined to let the matter drop, the inhabitants of said district, at a special meeting held January 7, 1867, voted to build a new school-house; and, according to instructions, said trustee contracted for the building of such school-house, made out his tax list, warrant, etc., and placed them in the collector's hands.

In the latter part of February the commissioner gave to said trustee notice of a meeting to be held March 5, at which he would hear and determine objections to the order issued as aforesaid, and at the same time extended the time at which such order should go into effect.

On the appointed day the commissioner was present, and, after due consideration, issued an order confirming that made December 1, as aforesaid.

The respondent submits an affidavit that he was prevented, by the bad state of the roads, and by the inclemency of the weather, from meeting said trustee at the time first appointed. He shows that he made an attempt to reach the designated place at the time appointed, and that it was through no fault of his own that he was not present according to notice.

There are two reasons why this answer is insufficient to excuse the irregularity complained of. In the first place the final meeting was held, not before the first of March, the day upon which the original order was to have taken effect, but upon the 5th of March. No valid action having meanwhile been taken to confirm the original order, which, in consequence, expired on the day when, had it been properly confirmed, it would have taken effect. There was, consequently, no foundation for the confirmatory order issued March 5. The action of the commissioner in extending the time for the taking effect of said original order imparted no lengthened vitality thereto, it being a general rule of law that courts of inferior jurisdiction cannot alter or review their own judgments, and in these cases of altering district boundaries the school commissioner acts as a court having inferior jurisdiction.

Again, if the order for extending the time beyond the three months, and appointing a new meeting with the trustees for the purpose of hearing objections to the proposed changes, be considered as a proceeding *de novo*, then his action is void, because the order, as confirmed, took effect within three months from the date of the notice of such meeting, contrary to the provisions of section 3, title 6, of the General School Act.

The appeal is sustained, and the said orders issued by Commissioner Miller on the 1st of December, 1866, and the 5th of March, 1867, so far as they affect school district No. 11, of the town of Harmony, are hereby declared void. Per V. M. Rice, July 12, 1867.

A commissioner cannot appoint a day for hearing objections to an order for the alteration of a district subsequent to the date fixed for it to take effect. A confirmatory order made on such subsequent day is void.

On the twenty-first day of November, 1866, the school commissioner issued an order consolidating school districts Nos. 3, 7 and 8, of the town of Clymer, and No. 3, of the town of French Creek, and also annexing to said consolidated district portions of district No. 6, of Clymer, and joint district No. 5, of Clymer and French Creek. Said order, so far as it affected district No. 3, of Clymer, and No. 3, of French Creek, took effect immediately, the consent of the trustees having been given. So far as the other districts above mentioned were affected, said order was not to take effect till the twenty-first day of February, 1867. Said commissioner also gave notice, to the trustees dissenting from said order, of a time and place when and where he would meet them, and hear and determine objections to said order. Said trustees were present at the time and place appointed, but the commissioner failed to meet them.

Another notice was served upon said trustees by said commissioner, appointing another day on which the meeting above mentioned would be held, and the before mentioned objections considered. Again the said trustees were present at the specified time and place, and again the commissioner failed to meet them.

A third notice, in substance the same as the others, appointing the tenth of March as the time when he would meet said trustees for the purposes above mentioned, was served by said commissioner. The dissenting trustees again presented themselves, and were this time met by the commissioner, who, after listening to their objections, determined to confirm his previous order, and did so confirm it, by a writing, under his hand, directing that the same should take effect March 29, 1867. The trustees of said district No. 8 now appeal from said order, and ask that so much of it as relates to the school district be declared void and set aside for the following reasons:

1. On account of the failure of said commissioner to meet said trustees at the time first appointed, or within the time required by law;

2. Because the distance to the school-house of the consolidated district is so great that it will be impossible to send children to school;

3. Because it will make additional and unnecessary expense for the inhabitants of said district No. 8;

4. Because of the influences around the village of Clymer, where the school-house of the consolidated district is to be situated, are bad.

Under the second point, the appellant states that the point in said district No. 8, nearest the village of Clymer, is three-quarters of a mile distant, and the farthest point therein is distant from said village two and three-quarter miles; that the inhabitant of said district living nearest said village is distant one mile and a quarter, and that the farthest inhabitant thereof is distant two and one-half miles therefrom. In support of the third point, the said trustee claims that the said district has now a comfortable, though old-fashioned school-house, and further claims that the district has passed a resolution to build a new school-house during the present season.

To support his fourth point, appellant alleges that there are in said village a liquor tavern, grocery store, etc., where the scholars can obtain liquor, and where, so far from their homes, the children would be likely to learn profanity and drunkenness. It is also claimed by the appellant that fourteen out of the eighteen legal voters of said district are opposed to said consolidation, and that they have signed a remonstrance against the same.

The answer to the appeal shows, in explanation of the failure of the commissioner to be present at the time and place first appointed for the purpose of hearing and deciding objections to said order, that "the snow was so deep and so badly drifted that it was impossible and even absurd to attempt traveling at the time." This answer is not as complete as I could wish. It does not show that any attempt was made by the commissioner to keep his engagement. The appeal papers show that the trustees were able to travel from their respective homes to the place designated by the commissioner, and that they were at the

appointed place at the appointed time. Why, then, was it impossible for the commissioner to reach the designated place at the proper time? It might have been argued that the commissioner had a greater distance to travel, and that the roads over which he would have been obliged to pass were in worse condition than those over which the trustees traveled; but such a defense is not set up in the answer, nor is it claimed therein that the commissioner made an attempt to reach the place at the appointed time, and that he was forced back by the bad condition of the roads or the inclemency of the weather.

It will be remembered that, by the terms of the first order, the alteration, so far as it affected the dissenting districts, was to take effect some time between the 20th day of February and the 1st day of March. But, before such order could take effect as to these districts, it was necessary that a hearing should be granted to their trustees, and a subsequent order is issued confirming the first order. It has been held in this department time and again that, unless this subsequent confirmatory order shall be issued, the first order, so far as it affects dissenting districts, falls to the ground, expiring on the day originally fixed for its taking effect.

In this case, the confirmatory order was not issued till March 6. Before that date, the time fixed upon for the taking effect of the first order had elapsed, and such order was, therefore, according to the rule above quoted, dead. Being dead, the confirmatory order could not resuscitate it, and this latter order having, therefore, no foundation upon which to stand, also falls. There is no doubt in my mind but that a commissioner, where prevented from meeting the dissenting trustees at the time appointed, by circumstances over which he had no control, may designate some other time and place, by giving the notice prescribed by law. But such time must be before the expiration of the time mentioned in the first order for the taking effect thereof.

For the reasons above set forth, I feel bound to sustain this appeal, and said order issued by the said commissioner on the 21st of November, 1866, as aforesaid, so far as it affects district No. 8, of the town of Clymer, and all other school districts, the trustees of which did not consent to such order, is hereby declared void, together with the subsequent confirmatory order issued March 6, 1867. Per V. M. Rice, July 12, 1867.

A school commissioner has no power to declare illegal a meeting held to decide upon the formation of a union free school district, and to authorize another meeting.

It appears from the testimony submitted in this case, that a special meeting was duly called and held in said district about the 10th of November, 1866, for the purpose of deciding whether a union free school should be established therein. The vote on the question was taken by ballot; twenty-six votes were cast, of which seventeen were in favor of organizing such free school, and nine against the same. The proposition, not having received the assent of two-thirds of the legal voters present and voting, was declared lost. Subsequently, by order of the school commissioner of the second district of Chautauqua county, another special meeting was held on the 29th of December, 1866, said commissioner having decided that the meeting held on the 10th of November, as aforesaid, was void on account of certain irregularities specified by him. This second meeting also proceeded to ballot on the question of organizing a free school in said district; sixteen ballots were cast which had written on them "For Union Free School," and ten were cast which had written on them, "Against." In counting the ballots, the chairman rejected all those having written on them the word "Against," and declared the vote in favor of a union free school unanimous. All those who deposited the ballots on which were written the word "Against," make affidavit that they are legally entitled to vote at school district meetings in said district, and that by the word "Against," they intended against a union free school.

All the proceedings in the matter of organizing a union free school in this district since the meeting held on the 10th of November, as aforesaid, are void. In the first place the school commissioner had no jurisdiction to pronounce the

proceedings of that meeting void, nor to order another special meeting to be held for the purpose of voting upon the question decided at that meeting. The Superintendent of Public Instruction is the only school officer authorized, by law, to assume jurisdiction over that class of questions. But, even if the second meeting had been legally held, I should still be obliged to decide that the motion to organize a free school in said district was lost, because less than two-thirds of those present and voting cast their ballots in favor of such proposition. The appeal is hereby sustained, and the proceedings of the meeting held in said district, December 29, 1866, are pronounced void. Per V. M. Rice, March 11, 1867.

A district is not annulled unless all its parts are annexed to adjoining districts, so that nothing of the original district remains.

Unless the commissioner's order for the alteration of a district recites the refusal or consent of the trustees, it is null and void.

No answer to this appeal having been filed in this department, the statements made by the appellants must be taken as true, and decision be rendered accordingly. It appears that on or about the third of August, 1866, the said commissioner, by an order filed with the town clerk of Westville, divided district No. 2 of said town into two portions, calling the south part of the old district No. 8, and the north part No. 2. By the terms of the order the old district is *dissolved*; but, as one of the new districts formed consists entirely of territory formerly comprised within the limits of old district No. 2, it is plain that it was not a *dissolution*, but an alteration, of said district, that was effected. A district is annulled only when all its parts are annexed to other districts, so that nothing of the original district remains. If any of it remains as a distinct district, though designated by a new name and number, it is not a case of "annulling." Now, in every case of alteration, when the consent of the trustees of the district to be affected is not obtained, it becomes necessary for the commissioner, in making his order, to recite the refusal of the trustees and to direct that said order shall not take effect, as to such dissenting district, until a day therein named, and not less than three months after notice to the dissenting trustees of the time and place when and where their objections will be heard. (*Sections 3 and 4, title 6, General School Law of 1864.*) But the order above referred to does not recite either the assent or refusal of the trustees, but directs that the order shall take effect October 1, 1866—less than two months from the time of making said order.

Very plain and clear provisions of the law have thus been altogether disregarded by the commissioner, and the Superintendent cannot sustain his action.

The appeal is hereby sustained, and said order, made by said commissioner, as aforesaid, and filed with the town clerk of Westville, is hereby declared null and void. Per V. M. Rice, September 29, 1866.

It is only after a school commissioner has granted an order for the alteration of a school district, that the supervisor and town clerk can be associated with him to review his proceedings.

It appears that some time during the school year closing with September 30, 1865, application was made to the school commissioner for the second commissioner district of Franklin county, for division of school district No. 2, in the town of Westville. The commissioner decided not to divide. It appears that subsequently, on the eleventh day of August, 1865, the supervisor and town clerk of the town were associated with the commissioner, and the three, acting as a board, rendered a decision in terms reversing the order of the commissioner and dividing the district. The supervisor and town clerk have no jurisdiction in the alteration of school districts, except in cases where the commissioner has granted an order making an alteration. This is not such a case. Therefore, the order made by the school commissioner for the second commissioner district of Franklin county, and the supervisors and town clerk of the town of Westville, in said county, on or about the fourth day of August, 1865, dividing school district No. 2, of said town, was, and is hereby declared, null and void. Per V. M. Rice, March 30, 1866.



A school commissioner has no jurisdiction to alter a school district until the trustees thereof have been asked and have given or refused to give their consent. The order for the formation of a district must contain a recital of such consent or refusal.

Under section 3 of title 6 of the consolidated school act of 1864 the school commissioner has no jurisdiction to make an order altering a school district until after the trustees have been asked and have refused to consent to the proposed alteration. These appellants, three in number, all swear that their consent to this alteration had not been asked subsequently to the decision of the appeals brought to this department from this same district last year. There is no allegation in any paper submitted to the Superintendent by the respondent claiming that any such request had been made previous to making the order bearing date June 8, 1865, altering the boundaries of said district.

Therefore, I must hold that no such consent was asked or refused. Hence, the order made by the school commissioner was void for want of jurisdiction. But the section above referred to provides, also, that the commissioner may make and file with the town clerk his order making the alteration, but reciting the refusal, etc. The order made in this case recites no such refusal, and hence the commissioner, having failed to comply with the plain requirement of the statute, and to recite in the order the fact giving him jurisdiction to make it, the order is void.

The appeal is, therefore, sustained, and said order, made by said Orrin R. Bouton, school commissioner, and the confirmation thereof referred to in the said appeal, are hereby declared null and void. Per S. D. Barr, Deputy Superintendent, December 16, 1865.

A district cannot be compelled to rebuild where school-house has been destroyed; but, where it for a long time refuses to do so, may be annulled and attached to others adjoining.

There is no law by which a district can be compelled to rebuild, where the school-house has been destroyed; but a trustee is empowered to hire rooms temporarily, for the accommodation of the children, whenever he shall deem it necessary. This he can do without a vote of the district. If the district refuses to build for an unreasonable length of time, the school commissioner of the district will examine into the case, and report as to the expediency of annulling the district and attaching it to those adjoining. Per V. M. Rice, Superintendent, February 7, 1866. (*Letters*, vol. 5, p. 130.)

School commissioners not to form new districts until boundaries are defined by inhabitants.

School commissioners should not make any order forming a new school district until after the inhabitants shall have properly defined the boundaries of the proposed district. Per V. M. Rice, Superintendent, March 26, 1866. (*Letters*, vol. 5, p. 243.)

School commissioners may, at any time, amend the records of district boundaries.

An amended record of the boundaries of school districts may be made, or caused to be made by school commissioners, by virtue of subdivision 1, section 13, title 2 of the general school law as amended by section 2, chapter 547, Laws of 1865, at any time, whether between the first days of April and October, or not. Of course this does not give them the power to alter districts, by taking from or adding thereto property, the exact location of which has been before definitely ascertained and understood between April 1 and October 1; but it does give them the power to settle disputes in regard to district boundaries at any time. Per V. M. Rice, Superintendent of Public Instruction, April 5, 1866. (*Letters*, vol. 5, p. 266.)

Commissioners only have power to form and alter school districts.

The law gives to inhabitants of school districts no power to dissolve or annul their school district. This power is vested in school commissioners only, and can be exercised by them only under certain restrictions. Per S. D. Barr, Deputy Superintendent, October 11, 1866. (*Letters*, vol. 5, p. 616.)

Boards of supervisors have no power to alter school commissioner districts.

The commissioner districts, as organized under existing laws, and as recognized in the election of school commissioners in 1863, must continue to be held and regarded as the school commissioner districts of your county, until expressly altered or modified by the Legislature.

Boards of supervisors have no power to alter school commissioner districts. (*See sections 2, 3, and 6, of title 2, chap. 555 of the Laws of 1864.*) Per V. M. Rice, Superintendent of Public Instruction, October 9, 1866. (*Letters, vol. 5, p. 614.*)

Apportionment of property of dissolved district.

Where a district is annulled, and a sale and apportionment of its property made in a legal manner, and any inhabitant of the dissolved district refuses or neglects to receive the share apportioned to him, the supervisor, on an affidavit of the facts, will be authorized to pay over such share to the trustees of the district of which such inhabitant is a member, to be applied by them in the reduction of any tax which may thereafter be imposed on him for distinct purposes. Per S. S. Randall, Deputy Superintendent, April 28, 1854. (*Letters, vol. 1, p. 54.*)

Districts, how consolidated or annulled.

A school district is consolidated when formed of two or more districts united. It is annulled by annexing the several portions of its territory to adjoining districts. Per V. M. Rice, Superintendent of Public Instruction, November 13, 1854. (*Letters, vol. 1, p. 376.*)

Annulment of a district rests with school commissioner.

The annulment of a district rests with the school commissioner. This department cannot interfere to prevent the act being done; but it can set it aside afterward on appeal, if it is made to appear that the dissolution ought not to have been effected. Per E. W. Keyes, Deputy Superintendent, April 16, 1864. (*Letters, vol. 3, p. 107.*)

The personal convenience of one or two inhabitants will not be permitted to control in the alteration of districts, where such alteration would detach property from a weak district and attach it to one much stronger.

On an appeal from an order of a school commissioner altering a certain district, it was *held*, that whatever private convenience might be subserved, it would be at a sacrifice of settled principles of public policy to carry into effect an alteration, the apparent consequence of which would be to exaggerate the disparity of districts already existing, and that such alteration, therefore, would not be allowed. Per V. M. Rice, Superintendent, March 9, 1857.

Where an order for the alteration of a district is alleged to have been made, but no such order is found recorded by the town clerk, other evidence in proof of the fact of such order being made will be received.

Where no record of an alleged order altering certain school districts can be found, the affidavit of the town superintendent at the time of the making of the alleged order, that he actually made the order, will be received in evidence, and it will be assumed that the order was actually made at the time alleged. Per V. M. Rice, Superintendent, March 31, 1857.

A school commissioner has no power to adjudicate upon the validity of an order made by his predecessor.

On an appeal from an order made by a school commissioner, annulling the proceedings by which certain territory was organized into a school district, it was *held*, that the declaration of his opinion, however correct, as to the validity of an act by his predecessor, has no greater force than that of any other citizen. Per V. M. Rice, Superintendent, February 7, 1857.

The department will not sanction the setting off of a person from a weak district to a strong one, on account of a difficulty which he may have in the district where he resides.

On an appeal from the proceedings of the local officers in setting off from a weak district the farm and residence of one of the inhabitants of said district, the local officers, in justification of their course, set forth that a difficulty of long standing exists between the inhabitant set off and the district of which he is a resident, and that, in consequence of this difficulty, he has not for some time sent to the school in his district. They, therefore, felt that the cause of education would be more effectually promoted by setting him off to another district.

While I concede that the motives of the local officers were just and worthy in themselves, I cannot find in the circumstances that surround the case a good reason for the conclusion arrived at. The precedent established is a dangerous one, which, though, if it could be localized, might not be very unfortunate, yet, if sanctioned by the department, and thus made of general application throughout the State, would prove a source of unending contention and strife. To secure a change from one district to another would then only require the party desiring such removal to get into some difficulty with the district.

For the reasons above set forth, the order will be set aside. Per E. W. Keyes, Deputy Superintendent, October 13, 1859.

An alteration of a school district, lying partly in the districts of two commissioners, cannot be effected without the joint action of the commissioners. Consent of trustees to an alteration of district should recite the fact of a meeting and consultation.

The principle which this department has always recognized is that, when any district, affected by a proposed alteration, lies partly within the jurisdiction of two or more commissioners, their joint action is indispensable to give jurisdiction of the subject-matter. It is not enough that the new district formed lies wholly within the jurisdiction of one commissioner. The fact that other districts, whose boundaries are thereby changed, are wholly or in part within the limits of another commissioner's district, gives him a rightful voice in determining to what alterations, if any, such district shall be subjected.

The consent given by the trustees to the proposed alteration of their district must show upon its face that there has been a meeting of the trustees to consider and act upon the question of alteration. Where such is not the case, the consent is of no account. Per V. M. Rice, Superintendent, April 17, 1862

Where a new district has been erected to settle a controversy, the inhabitants of such district protesting that they were able to maintain a school, it should not subsequently be enlarged at the expense of surrounding districts.

Where a new district has been erected as a means of settling a district controversy, the inhabitants forming the new district earnestly protesting that they were abundantly able to maintain a school, and that they would not, at any future day, ask for an increase of territory, *held*, that it is opposed to all sound and just policy to grant the formation of a new district to pacify an unhappy strife; and, a few years after, to suffer the weakness and inefficiency of such a district to plead in behalf of its further enlargement, and the consequent reduction of surrounding districts. Such a policy is practically offering a premium for contention and strife; and, whenever any order for the alteration of a district appears, to this department, to favor such a policy, it will be annulled upon that ground. Per E. W. Keyes, Acting Superintendent, December 5, 1861.

Local boards for the alteration of districts cannot act upon districts lying outside their own town.

Where a local board, composed of the school commissioner and the supervisor and town clerk of the town of M., proceeded to act upon a question of setting off portions of a district lying in the town of N., *held*, that the board so

composed had no jurisdiction over the question, and that the order made by them was absolutely void. Per E. W. Keyes, Acting Superintendent, December 5, 1861.

A commissioner has no power to divide a union free school district.

This is an appeal from the refusal of the school commissioner to divide the district.

Aside from the merits of this case, I think there is a fatal objection to overruling the decision of the commissioner, found in the fact that this appears to be a union free school district, and, as such, it is my conviction that the school commissioner has no power to divide it. If it were held that he had power to divide it, many perplexing questions would arise.

In my opinion, therefore, there is no authority, short of the Legislature, competent to effect the contemplated division.

The appeal is therefore dismissed. Per E. W. Keyes, Acting Superintendent, December 5, 1861.

The department will not set aside a consolidation proper in itself, because of the existence of new elements of opposition that have arisen since the consolidation was effected.

The local board, consisting of the school commissioner, the supervisor and the town clerk, by an order duly made, and in accordance with the policy advocated by this department, consolidated two districts. The consolidation of these districts had been favorably discussed by the inhabitants of each for some time previously, but the basis of the consolidation is a matter of difference, owing to certain pecuniary irregularities in the two districts, and, consequently, an appeal is brought from the action of the board.

To reverse the action of the board now, because of conditions which they could not anticipate, and for which they are not responsible, would, to my mind, be an unjust reflection upon their official integrity and wisdom, and would, practically, offer a premium to disaffection and discontent. I am by no means insensible to the suggestion that a nominal union is of little value where the spirit of union is not found. It may even be of positive disadvantage. The utmost, however, that I am willing to do, is to refer the matter back to the local authorities, empowering them to reverse their action if the circumstances of the case seem to demand it. Per E. W. Keyes, Acting Superintendent, June 4, 1861.

The supervisor and town clerk cannot act with the commissioner in altering the boundaries of districts unless so requested.

This appeal alleges that the town clerk and supervisor were present and acted without authority, at a meeting to alter the boundaries of certain districts, not having been requested to act with the commissioner by the trustees of either district affected. This sufficiently disposes of the order, for the town officers could not acquire jurisdiction without the request of the trustees, and, without jurisdiction, their action is void. Per H. H. Van Dyck, Superintendent, December 15, 1860.

The consent of trustees to an alteration of their district requires a meeting, and the fact of a meeting should be set forth in the written consent given.

This is an appeal from the order of the school commissioner altering the boundaries of the district.

The order is issued upon the application of two parties interested, and upon the written consent of two of the trustees, one of whom is a party, desiring to be set off by said order to another district.

Section 7, of chapter 151, Laws of 1858, provides as follows: "Any two trustees of any school district may make any order or transact any business in execution of the powers conferred upon said board of trustees by law; provided it shall appear in the order of proceeding filed by them, that all the trustees of

the district met and deliberated on the subjects embraced in each order or proceeding, or were duly notified to attend a meeting of the trustees for the purpose of deliberating thereon."

No such meeting or notice appears upon the face of the proceedings in the present instance. There was, therefore, no evidence before the commissioner sufficient to authorize him to make the order of alteration. The commissioner acted under a misapprehension and the consent of the trustees, which he supposed genuine and valid, lacks every requisite that could make it binding upon him. The order is, therefore, set aside. Per H. H. Van Dyck, Superintendent, August 27, 1860.

Order altering district boundaries will be set aside when the new boundaries are not defined by other lines than farms described by the names of the occupants.

An objection to the order appealed from is that the boundaries are not properly defined. I regard the objection as well taken. Boundaries should be defined by known established monuments and marks, that survive the chances and changes that transpire in the ownership of the soil. Boundaries by men's farms or other transitory and perishable lines, however significant and clearly understood at the time, are perpetually subject to the changes and vicissitudes of life, and the roving and commercial spirit of our age, and in a few years become vague and uncertain, as the memory of men and the title to their possessions pass away. This vagueness and uncertainty concerning the actual boundaries of districts whose lines have been run to coincide with farms that have afterward been cut up into smaller lots, or consolidated with other farms, whereby the original boundaries have become obliterated, is a fruitful source of contention, strife and litigation in school districts. This department has, therefore, acted upon the policy of setting aside the action of school officers, in the alteration of districts, where this principle of defining boundaries by proper monuments and prominent landmarks is disregarded. Per H. H. Van Dyck, Superintendent, January 31, 1860.

An order, defining the boundaries of a district, not intended as an alteration, and made under an evident or probable misapprehension of facts, will be vacated.

As in matters of this kind, where the interests of individuals are considerably involved, it is but simple justice that they be preserved from the consequences of error, or doubt, or misapprehension; and finding, as I do, from the evidence, a liability, not to say a strong probability, of such a misapprehension on the part of the board, I am disposed to give the appellant the benefit of the doubt there may be of the correctness of the conclusions arrived at, and the order of the board for the alteration of the district is hereby vacated, and the matter is referred again to the proper officers, to take such further and future action as may be deemed expedient. Per E. W. Keyes, Deputy Superintendent, July 29, 1859.

Where it is proved that notice of an alteration has not been given, and the same has not been recognized or acted upon, the order for such alteration will be vacated.

It appears that in 1850, the town superintendent re-organized the districts, and, in so doing, changed the boundaries of districts No. 9 and No. 15. The trustees of No. 9, in the year 1850, swear positively that no notice was ever served upon them of any such alteration, and it is further shown that both districts have ever acted in ignorance of such alteration.

The giving notice of any alteration is indispensable to its completeness. As the evidence here is conclusive that no notice ever was given, the order referred to is hereby vacated.

Had the alteration made in 1850 been recognized and acted upon, this would, of itself, have been regarded as sufficiently conclusive evidence of notice. Per H. H. Van Dyck, Superintendent, July 28, 1859.

Commissioner justified in offering the alternative to a district, to build a new school-house or be annulled.

It is represented that the commissioner, in an early visitation of the district, suggested the necessity of their building a new school-house, the old one being altogether unsuitable for a school. So important was it esteemed by him, that he assured them that unless they would build a house, he would annul the district. That was equivalent to saying that if they possessed too little vitality—too little interest in school matters—or were too poor and feeble to furnish a good school-house, it was evidence conclusive to his mind that the district ought to be annulled.

In this position the commissioner was right. Per H. H. Van Dyck, Superintendent, May 13, 1859.

Absence of the record of the formation of a district is not material when such formation is otherwise conclusively established.

On an appeal by the trustees of district No. 28, from the proceedings of the trustees of district No. 6 adjoining, the following facts appear: That district No. 28 was organized by act of the school commissioners in 1843, being formed in part from district No. 6. Ample evidence is adduced to show that the district was duly formed by the proper officers, and with the consent of the trustees of the districts from which it was taken. By some mischance, the order forming the said district was never recorded in the town clerk's office, and the trustees of district No. 6, in making out their tax lists, had assessed the property belonging to their district, as defined by the record, thereby, of course, including the territory and inhabitants set off to No. 28. From this action the trustees of district No. 28 appeal.

The record not being a part of the act itself, but only evidence of it, its absence is not material when the act can be proved by other conclusive or satisfactory evidence. Such being the case in the present instance, the evidence of the formation of district No. 28, is conclusive in the absence of the record. Per E. W. Keyes, Deputy Superintendent, May 6, 1859.

An order consolidating districts will not be set aside on the ground that the inhabitants of one of the districts are nearly unanimously opposed to it.

This is an appeal from an order of the school commissioner consolidating district No. 8 with joint district No. 6. The principal grounds upon which the appellants claim a reversal of the order are that a large majority of the inhabitants of the new district are opposed to consolidation.

The wishes and convenience of the inhabitants of a school district should not be wantonly or unnecessarily opposed. Still, it is a popular and prevalent misapprehension that, in the organization or alteration of school districts, the voice of a majority of those interested or affected must necessarily prevail. Only upon the supposition of one or the other of the following conditions would the pursuance of such a policy be safe or just: First, that the district is a community supporting its school wholly with its own means; or, second, that the promotion of the wishes of the inhabitants shall be perfectly compatible with the conservation of a just and liberal policy, embracing in its operation all the districts in the State. The first of these conditions is, of course, never realized in our system, and the evidence is such as to show that the second condition is not realized in the second case.

The appeal for a reversal of the order of the commissioner cannot, therefore, be favorably entertained; and the order must be, and hereby is, affirmed.

The principle here involved, of sanctioning the consolidation of districts whenever their separate existence must be maintained at an undue public sacrifice, except in those isolated instances where the sparseness of population and limited assessed valuation render them proper objects of public charity, is of general application, and may be regarded as a precedent which the department will follow whenever similar issues are presented. Per H. H. Van Dyck, Superintendent, February 24, 1859.

Where certain duties are required of public officers, their performance will be presumed, unless the contrary is shown.

The general doctrine, that, where certain duties are required of public officers, their performance will be presumed unless the contrary is shown, is too well established to admit of question.

In the decision of Superintendent Spencer, as found on page 8, old Code of Public Instruction, he excepts from this doctrine, in general terms, those cases in which the duty enjoined is a subsequent or final act, designed to give validity to certain primary proceedings. He says, to quote his own words, that, "The doctrine of presumption applies only to those cases where the act in question should have been performed in the regular and ordinary course previous to the final act, and was necessarily incidental to it; as, after a sale upon execution, a levy will be presumed," etc.

Now, with how much soever force and pertinence and justice this construction of the doctrine of presumption may have been applied in the particular case under consideration, by the Hon. Superintendent at that time, I must dissent from it as of general utility and propriety, and as not sanctioned by the uniform ruling of the highest judicial authority in England and this country. In a somewhat extended review of the cases in which this doctrine is applied, I have been unable to find anywhere the distinction above referred to, and here sought to be made paramount.

In 3 *East.*, 192, the doctrine of presumption in favor of the discharge of duty, on the part of a public officer, is fully discussed; and, in that case, the duty to be performed was a final act, indeed, a single act only the performance of which would make certain parties responsible for any neglect. Here it was presumed that the officer, whose duty it was to give a certain notice, had given such notice; and it was held that the parties interested in overcoming this presumption must produce the proof positive that the notice required had not been given, or else the doctrine of presumption must prevail.

This case is continually referred to by our courts as standard authority upon the doctrine of presumption, and it appears to me so sweeping and conclusive, as to leave to the opinion of Mr. Spencer very little force as the assertion of an essential and prevalent legal principle. Per H. H. Van Dyck, Superintendent, February 21, 1859.

Where the trustees have given their consent to an order annulling a district, there is nothing in the proceedings which can be stayed by an appeal.

On an appeal from an order of the commissioner annulling a certain district and annexing it to others, it was *held* that there was nothing in the proceedings to be stayed by the appeal, for the order of the commissioner had already taken effect, and the only question was not whether it should be prevented from taking effect, as it would have been if the trustees had not given their consent, but whether the order should be reversed and the former condition of things restored. Per H. H. Van Dyck, Superintendent, January 17, 1859.

Where an order has once been made by a town superintendent annulling a certain school district, which said order has never been enforced, though duly recorded, it may be enforced upon the demand of competent authority.

In the year 1855 an order was issued by the town superintendent (school commissioner) annulling district No. 4 of that town, which order was duly recorded in the town clerk's office. He failed, however, to complete the work commenced, by annexing the territory of the late district to those immediately surrounding.

Disregarding this incomplete action of the town superintendent, the inhabitants of No. 4 still continued to act as a district, kept up a school, reported pupils, drew public money, and, by the local officers and by this department, were recognized as a district down to the present time. The order of the town superintendent, before alluded to, has been held in abeyance, been suspended, by the subsequent action of the district and the local officers; but it

has not been revoked thereby, but still remains vital, to be enforced upon the demand of the competent authority. Per E. W. Keyes, Deputy Superintendent, January 22, 1859.

Where the presumption is in favor of the regularity of proceedings in the alteration of district boundaries, the order making such alterations will be sustained.

On appeal from an order of the town superintendent defining and altering the boundaries of the district, it was *held*, that "only upon the presumption of a doubt concerning the legal validity of the order appealed from can the question, as an original issue, be entertained by this department." In the present case the record is found duly made in the town clerk's office, and upon a map prepared under the direction of the town authorities the boundaries, as described in said record, are properly delineated. The testimony is, therefore, so strong as to be nearly conclusive, and the evidence to the contrary, being only negative, is entirely insufficient to rebut the presumption already established.

The orders of the town superintendent are, therefore, declared valid, and the appeal dismissed. Per E. W. Keyes, Deputy Superintendent, August 27, 1858.

Where trustees were misinformed as to the extent of the powers of town officers in a proceeding for the alteration of the boundaries of a school district, and, consequently, neglected to exercise those powers, the order of the commissioner in the proceeding will be set aside.

It appears that, owing to the opinion expressed by the commissioner that each town of a joint district had but one vote on the question of alteration, the trustees neglected to notify the town clerks of their respective towns to meet with the supervisor and commissioner in acting upon the subject. They therefore claim that, being misled by this expression of opinion, the question has not been fairly adjudicated, and request that it be referred back for review by a full board.

The department is disposed to concur in the views of the trustees. Laboring under a misapprehension naturally and honestly entertained, and failing to avail themselves of all the advantages which the statute confers, I conceive that they are entitled to the interposition of this department in their behalf.

The matter is, therefore, referred back to the commissioner, with directions to give notice of a meeting for the purpose of reconsidering the order already made. Per E. W. Keyes, Deputy Superintendent, July 21, 1858.

Where a contract has been made, under authority of the district, to build a school-house, and a subsequent meeting votes to change and build on a new site, directing the trustees to pay any damages claimed by the contractor on account of the change in location, such action confers dangerous powers on the trustees, and is, therefore, unlawful.

A special meeting voted to build on the old site, and a tax of \$300 was voted and the trustees directed to prosecute the work. At a meeting of the trustees, pursuant to public notice, for the purpose of considering proposals for building the school-house, a petition was presented to the trustees, signed by a respectable number of inhabitants, asking that a special meeting be called for the purpose of changing the site. The trustees, not feeling at liberty to deny the petition, called a meeting. In the mean time, however, under the instruction of the previous meeting, they entered into a contract for the building of the house on the old site.

At the subsequent meeting, the trustees remonstrated against any action being had on the subject of removing the site, for the reason that a contract to build on the old site had already been made. But the meeting voted to change the site, and, at the same time, voted to raise a sufficient tax to indemnify the contractor against all damages sustained by him in modifying the terms of his contract.

*Held*, that, in thus directing the trustees to indemnify the contractor, the district conferred unauthorized and dangerous powers upon the trustees, whereby the rights and interests of the district were imperiled.



The power to levy a tax for imaginary expenses, to incur liabilities to an indefinite extent, is not among those which the statute confers on district meetings; still less can such power be delegated to trustees.

I must, therefore, pronounce the action of the meeting upon a change of site void. Per H. H. Van Dyck, Superintendent, May 29, 1858.

Regularity of notice to trustees of intention to define boundaries of district.

Power of arbitrators over alterations of districts.

It has been decided by this department that an arbitration between the trustees of a school district and a person having a claim against it is proper and legal, and the award binding on both parties. (*Old Code of Public Instruction*, page 22.) It cannot be supposed that this decision was intended to confer upon arbitrators higher powers than the law confers upon trustees or upon the district, nor to bring, within the jurisdiction of the former, questions upon which the latter are incompetent to pass. They are competent to determine individual cases of controversy relative to matters which, if no disputes were to arise, the trustees or the district would be authorized to decide or adjust; but they cannot be invested with general powers to make awards that shall control future action; they cannot establish precedents of binding obligation, still less can they usurp powers specially conferred upon a particular class of officers, and render ultimate decisions which are wholly and only within the purview of other authorities. The law has defined how and by whom the boundaries of districts are to be fixed, determined or altered. The judgment of an arbitration, upon a collateral issue, may assume what are the boundaries of a district, but it cannot establish them as such, except for the purpose of the particular issue presented. It cannot reach forward into the future and determine other issues by the same assumptions.

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The notice of a meeting of commissioners to establish or define the boundaries of a district, when served upon the trustees of the district affected, must be signed by the commissioners themselves. It is not good if signed by the trustees of another district. Per H. H. Van Dyck, Superintendent, May 4, 1858.

An order for the alteration of a school district, made by a board of local officers convened for that purpose, should be signed by a majority of such board. Otherwise it is irregular upon its face, not showing jurisdiction.

Exception is taken to an order altering the boundaries of the school district, which is signed by only half of the board convened for the purpose of making such alteration.

The irregularity is gross and palpable. The half of a board cannot issue an order, and justify their action by a vote of the majority, as was done in the present case, but the majority must issue the order. The vote is but a means to determine the will of the board; the order is the act whereby the alteration is effected, and must carry upon its face conclusive evidence of its authority. Such is not the case in the present instance. I cannot approve the irregularities attending the proceedings, and feel, therefore, compelled to annul the order. Per H. H. Van Dyck, Superintendent, March 22, 1858.

Individual opposition to a measure of public utility should be duly considered, but should be allowed to have weight only as it has a substantial foundation in reason and justice.

That due regard should be paid to the wishes and convenience of the inhabitants to be affected by the alteration or consolidation of districts, will be admitted without argument. That the wishes, the convenience and the interests, pecuniary and general, of individuals and of the minority, must occasionally give place to higher considerations of public convenience and general good, is equally true and obvious. While, therefore, individual opposition to measures of public utility should be duly considered, that opposition should be allowed to have weight only as it has a substantial foundation in reason and justice. A merely factious opposition, a dogged and persistent obstinacy, founded on

selfishness or feeling or willfulness or some fancied illusion, cannot be successfully urged to defeat any public purpose, good and desirable in itself. It is not the fact of opposition, but the occasion for it, that is to be considered. Per H. Van Dyck, Superintendent, March 5, 1858.

## LIBRARY.

That part of the district library purchased with money raised by tax upon the district may be sold. Per Spencer, September 17, 1839.

Trustees may exchange old library books for new ones.

Trustees of districts may legally exchange old books belonging to the district library for new, paying the difference, if any, in price, from the library money. Per S. S. Randall, Deputy Superintendent of Public Instruction, April 20 1854. (*Letters*, vol. 1, p. 34.)

In regard to exchanging library books.

No objection might be raised, if a district so determine by unanimous vote, to the exchanging of books in a library for others more appropriate to the wants of the people. Per V. M. Rice, Superintendent, September 8, 1854. (*Letters*, vol. 1, p. 281.)

A part of a district set off to another is not entitled to a share of the library.

Where a portion of a district is set off to another district, the portion thus set off has no claim to a proportionate share of the library of the old district, unless there was a special agreement to that effect. Per V. M. Rice, Superintendent, January 13, 1866. (*Letters*, vol. 5, p. 64.)

District librarian is, by law, entitled to no compensation for his services.

The district librarian is, by law, entitled to no compensation for his services, and the district has no authority of law for voting at the annual meeting a tax to pay for such services. (See section 16, title 7, chapter 555, Laws of 1864.) Per V. M. Rice, Superintendent, September 22, 1865. (*Letters*, vol. 4, p. 267.)

That part of district library which was purchased by a tax on property of district belongs to district, and may be disposed of by its voters, as they shall direct. But that part bought with public money belongs to the State, and the district cannot sell it.

That part of the district library which has been purchased by a tax upon the property of the district belongs unqualifiedly to the district, and may be disposed of by the voters thereof, as they may see fit to direct. But, in that which has been purchased with the public money apportioned to the district, it has only a qualified property. This portion of the library really belongs to the State, and the district is the bailee and not the owner of it. As such bailee, it has no power to sell or otherwise dispose of the library. Per V. M. Rice, Superintendent, November 23, 1865. (*Letters*, vol. 4, p. 552.)

## MEETINGS.

Verbal notice to clerk to call a district meeting is sufficient. A trustee who attends cannot object that he did not authorize the call. Per Dix, November 24, 1838.

Notice of meetings should specify the objects for which they are called; but omission is not fatal. An aggrieved party may appeal. Per Spencer, March 7, 1840.

A notice given by the district clerk for a meeting is legal, though the directions of the trustees to the clerk to give such notice were verbal.

A special meeting was held in district No. 5, Lisbon, St. Lawrence county, December 30, 1848, pursuant to a notice given by the clerk for the purpose, and the site of the school-house was voted to be changed.

The appellants object to the proceedings of the meeting, because the notices of the meeting by the district clerk were upon the verbal direction of the trustees.

If the district clerk gives the proper notices for a special meeting, the proceedings of that meeting will not be held to be illegal, although the trustees may have given the clerk only a verbal direction to give the notices.

The proceedings of the meeting, therefore, are legal and regular.

Appeal dismissed. Per Morgan, March 6, 1849.

The clerk of a district has no power to authorize any person to give notices for a district, or to do any other act.

The trustees of district No. 14, Lockport, called a special meeting, to be held on the 22d day of March, 1849, and directed the clerk of the district to give the proper notices.

Most of the notices were given by a son of the clerk. The meeting held in pursuance of such notice is alleged to be illegal.

It is the duty of the district clerk to give all notices for school meetings in his district, and in case of his refusal or of a vacancy in the office of clerk a trustee may give them.

But the clerk of the district has no power to authorize any other person to give the notices or to perform any other duties of his office.

The appeal is sustained, and the proceedings of the meeting are declared illegal and void. Per Morgan, April 7, 1849.

Where there is a deliberate omission to notify any taxable inhabitant of a special district meeting, at which a tax is voted to change site and build a new school-house, this department will hold the tax list inoperative as to those so omitted to be notified.

The appellants were set off to district No. 8 on the 17th of January last, by an order, to take effect on the 1st day of May instant. After the making of this order, several meetings were held in district No. 4, of which the appellants had no notice, and which they did not attend, under an apparent belief, on all hands, that they had ceased to be voters in that district. At these meetings, the site of No. 4 was changed to a point more remote from the appellants than its former situation, and a tax of \$400 was authorized for building a new school-house. On the 9th of March, three of the appellants were served with a written notice that a meeting of joint district No. 4, Scott and Sempronius, would be held on the 16th of that month, the notice not specifying the object of the meeting. At that meeting, resolutions were passed, reciting that doubts were expressed in regard to the legality of the calls of the meeting before referred to, and re-affirming and adopting the votes for the release of the old site, the location of the new one, and for a tax of \$400. Under the authority of this last meeting, the trustees have made out a tax list, including the appellants, from which, and from the proceedings of such meeting, the latter appeal.

The facts are presented upon an agreed statement signed by the appellants and trustees. There appears to have been a deliberate omission to notify the appellants of the meetings subsequent to January 17, and an omission to give them a notice of the object of the meeting of March 16, which, taken in connection with the manifest injustice of subjecting them to taxation for a school-house from which they are to receive no benefit, are sufficient grounds for declaring the tax list inoperative as against them.

The appeal is, therefore, sustained, so far as the same relates to the tax list, and the trustees are authorized and directed to correct and amend the same by striking out the names of the appellants, and apportioning the amount of taxes

assessed to them upon the remaining taxable inhabitants and property of such district, in proportion to the valuation thereof. Per E. P. Smith, Deputy Superintendent, May 9, 1855.

When the inhabitants of a school district, at their annual meeting, elect trustees, their proceedings will be held legal, although such election is made by a small minority of the inhabitants.

This is, in substance, an appeal from the refusal of the trustees of district No. 11 to grant an order upon the town superintendent for a portion of the public money belonging to the district, applicable to the payment of teachers' wages in favor of a duly qualified teacher employed by the appellants while acting as trustees under color of a legal election by the district, and who taught in the school-house of the district. The annual meeting, at which both sets of trustees were chosen, was notified to be held on the second of October, 1843, at six o'clock P. M., at which hour five inhabitants only were in attendance. They, however, organized and elected district officers in accordance with law. After their adjournment, but before leaving the house, the residue of the inhabitants came in and insisted upon a reorganization, which was accordingly had, without the participation, however, of the inhabitants first assembled, and the appellants were elected trustees. The county superintendent, having been consulted, gave his opinion that the latter election was legal and valid; and, in accordance with this opinion, the appellants proceeded to employ a teacher and take upon themselves the discharge of their official duties without opposition. The persons first elected, however, without questioning or controverting the right of the appellants to the use of the district school-house and the control of the district property generally, employed a teacher, who taught, under their direction and in accordance with a vote of the inhabitants first assembled, in a private house in a part of the district remote from the school-house. After the termination of both schools, the question of the legality of the election of the officiating trustees was submitted to this department, and the persons first elected declared to be the only legal trustees. They accordingly took possession of the books, papers and other property of the district, gave an order for a portion of the public money in the hands of the town superintendent in favor of the teacher employed by them, who was duly qualified, and refused to recognize the teacher employed by the appellants. From this refusal to recognize the teacher employed by the appellants the present appeal was brought.

The county superintendent, conceiving himself bound by the prior decision of the department declaring the first election valid, felt it his duty to dismiss the appeal and refer the rights of the parties to the department.

Although there can be no doubt of the validity and legality of the first election, yet the official acts of the persons subsequently chosen, under color of a legal election, and who took upon themselves the office of trustees, will be recognized and protected, for all practical purposes, as trustees, until the decision of the department declaring their election illegal was obtained. Their employment of a teacher prior to such a decision was, therefore, an official act, and, inasmuch as the teacher contemporaneously employed by the legal trustees has been paid, and there still remains a balance of public money, applicable to the payment of teachers' wages, in the hands of the town superintendent, it is the duty of the trustees, and they are hereby directed, to draw an order for such balance on the town superintendent, in favor of the teacher so employed by the appellants, while acting as trustees under a claim of a legal election, and to make out a rate bill and warrant, in the mode prescribed by law, for the residue of his wages, against the inhabitants who sent to school. By this disposition of the case, it is conceived substantial justice will be done to all parties, and the rights of none infringed. It is the misfortune of the appellants that they were not more punctual in their attendance upon the annual meeting of the district. Per S. Young, October 7, 1844.

It is the duty of the trustees, when requested by a respectable number of the taxable inhabitants of their district, to call a special meeting for the transaction of any legal and proper business which such petitioners may desire to bring before it.

This is an appeal from the refusal of the respondents to call a special meeting of the inhabitants and legal voters of the district, for the purpose of taking into consideration the application and division of the public money of said district on the request of twenty taxable inhabitants thereof. The trustees, in their answer, set forth certain facts and circumstances existing in the district which, in their judgment, justified them in declining to call such meeting and in making such disposition of the public money as they should deem expedient.

This view of the subject cannot, in the opinion of the Superintendent, be sustained. It is the duty of the trustees of a school district, whenever requested by a respectable number of inhabitants and legal voters of a district, to call a special meeting for the transaction of any legal and proper business which such inhabitants may desire to bring before it. The object of the petitioners in this case was unquestionably a legal and proper one. The inhabitants and legal voters of the district are authorized to make such disposition of the public money among the several terms of the school as they may judge proper, and it is only when they omit to act in the matter that the trustees are empowered to exercise their own discretion. If an improper disposition of the public money is made by the inhabitants, an adequate remedy is provided by appeal to this department. The circumstances, therefore, set forth by the trustees in their answer were insufficient to justify them in their refusal to call the special meeting called for. The trustees, therefore, are hereby ordered, within five days after the receipt of this order, to cause notices to be given for a special meeting of the legal voters of the district, to be held within ten days thereafter, for the purpose of taking into consideration the application and division of the public money of said district for the ensuing year, etc. Per E. W. Leavenworth, February 28, 1854.

Where an adjournment of a special district meeting is had for a period of more than one month, notice of the object of such adjourned special meeting is necessary.

The appellant in this case seeks to set aside the proceedings of an adjourned school meeting, held on the 2d day of July last, and the proceedings of the trustees in making out a tax list to collect a tax voted at said meeting.

By the papers before me, it appears that a meeting was held on the 24th day of May last, for the purpose of selecting a site and voting a tax for building a school-house. This meeting was adjourned to the 2d day of July. It is conceded by the trustees that no notice of the adjourned meeting was given, and they claim that none was necessary. The omission to give this notice is one of the grounds of complaint in the appeal.

By section 81 of the school law of 1847, clerks of school districts are required to give notice, in writing, of the time and place for any adjourned district meeting, when the same shall be adjourned for a longer period than one month. From this section it is manifest that notice is required in all cases where a meeting has been adjourned for more than one month. A failure to give such notice would be fatal, as a failure to give any notice of the time and place of holding the annual meeting. The adjournment in this case exceeded one month, and, therefore, notice of the meeting should have been given. As it was entirely omitted, the proceedings were irregular, and must be set aside. Per H. S. Randall, October 6, 1853.

Notice of the object of an annual meeting is not required by law. Every inhabitant is presumed to know that any business affecting the interest of the district may be transacted without special notice thereof.

This is an appeal from the proceedings of the annual meeting of a district held October 7, 1851.

At an adjourned annual meeting, held in the district April 7, 1851, a resolution was passed to change the site of the school-house, and the necessary taxes

were voted to purchase the site and to move the school-house. The proceedings of this meeting are presumed to have been legal.

On the seventh of October, 1851, the annual meeting was held. The customary notices for an annual meeting were posted in the district, but no particular business was specified except that officers would be elected.

At this meeting a resolution was passed reconsidering and rescinding the proceedings of April 7, 1851, so far as related to the change of site for the school-house and the raising of taxes to defray the expenses of the same.

It is alleged that special notice should have been given of the intention to reconsider the proceedings of the meeting of April seventh to make the proceedings binding.

This department has always maintained the rule, and the law prescribes, that the object for which a *special meeting* of a district is called shall be specified in the notice of such meeting. But an annual meeting is always an *adjourned* meeting. It is not necessary to give special notices, as every inhabitant of the district is presumed to know when it will be held, and also that any business which may properly come before any district meeting may be transacted at this. It is *the* meeting of the district, and every inhabitant is bound to be present to promote the interests of the district as well as to protect his own rights.

The whole business of the meeting of April seventh was subject to review, and it was competent to reconsider and rescind the whole or any part thereof, except so far as the trustees had carried out the vote of the first meeting, or incurred debts or responsibilities under it. Per Morgan, December 30, 1851.

Trustees have no power to set aside or invalidate the proceedings of a district meeting upon the assumption that they were illegal. Though illegal votes are cast at such meeting, the trustees cannot set aside the proceedings. The remedy is by appeal.

On the first day of October last, at an adjourned meeting of the taxable inhabitants of district No. 2, in Belmont, held for the purpose of locating a site for the school-house, a site was fixed on the land of Winkley and Smith, and the sum of \$200 voted to build a school-house thereon. A confirmation and renewal of the vote fixing the site was had on the thirtieth of November last, at a special meeting of the district, more fully attended by the inhabitants, but no tax was voted for building the school-house. On the fourteenth of December a vote was adopted locating the site on lands of E. Stanton, Jr., and the sum of \$300 directed to be raised for building. On the eleventh of January last, the site was again changed to the lands of Winkley and Smith, and the same amount voted to be raised for building the school-house thereon. Notwithstanding this last and final vote of the district, and in the absence of any appeal from the proceedings, the trustees have determined to apply the tax voted to build a house on Mr. Stanton's land, on the allegation that an illegal vote was received at the last meeting, by means of which the vote was invalidated and the preceding vote remained in force, and from this determination of the trustees the present appeal is taken.

If any of the proceedings of the meeting held on the eleventh of January were illegal, the appropriate remedy of the trustees or of any persons aggrieved was by appeal to this department. It is not within their power to set aside or invalidate those proceedings on their mere assumption of such illegality. The money directed to be raised at that meeting, in the absence of any appeal within the time and in the mode prescribed by law, must be applied according to the vote then taken, and any other application of it will be illegal and invalid, and will subject the trustees to personal responsibility to the district for the amount so expended, and to the forfeitures and penalties prescribed by law.

The allegation, moreover, of the trustees, that an illegal vote was cast at the meeting referred to, by which the result was changed, is wholly unsupported by the facts as they appear from the papers.

The proceedings of the meeting of the eleventh of January are, therefore, hereby confirmed, and the trustees directed to apply the tax voted accordingly. Per Morgan, February 11, 1850.

The inhabitants of a district have no power to dissolve or annul the district.

The first meeting in district No. 9, Lloyd, Ulster county, was held August 23, 1848, at which the following proceedings were had:

A chairman and clerk *pro tem.* were chosen. The officers of the district were elected and a site for the school-house designated. During these proceedings some difficulties arose upon questions of order.

A motion was made and seconded that the meeting declare the district to be annulled, which the chairman refused to put, when the mover called for the ayes and noes, and declared the motion to be carried.

A motion was then made to adjourn, but, not being seconded, the chairman refused to put it to vote.

The mover called the ayes and declared the meeting adjourned, whereupon many withdrew.

The meeting continued its organization, and transacted business after the withdrawal of some of the inhabitants.

The appellant desires that the proceedings of the meeting held after the motion to adjourn was made be declared void.

The motion to dissolve the district was entirely out of order, as it was upon a question over which the district had no control. A motion to adjourn cannot be put to vote until it is seconded. The chairman was, therefore, correct in refusing to put to vote either of these motions.

The appeal is dismissed, and the proceedings of the meeting confirmed. Per Morgan, December 22, 1848.

It is not in the power of a district meeting to control the trustees in the exercise of their duty of prosecuting delinquent predecessors for not rendering an annual account, or for not paying over a balance of money remaining in their hands. A resolution attempting to limit their power in this respect is void.

A special meeting held in district No. 18, in the town of Sodus, February 22, 1848,

*Resolved*, That a former resolution directing measures to be taken to collect certain arrearages alleged to be due from former trustees should be rescinded; and further, that no civil proceedings should be commenced by the trustees of the district for school moneys not paid over by former trustees, unless by a special resolution of the district.

Both resolutions mentioned in the appeal were adopted, under a misapprehension of the powers and duties of the inhabitants, when assembled in school district meetings.

Every trustee is bound, by law, yearly, to render an account to the district of the moneys received and paid out by him, and to file said account with the district clerk, and also, upon going out of office, to pay over any balance of money remaining in his hands to his successors in office.

For any neglect or refusal to render such account, or to pay over such balance, the delinquent forfeits to the use and benefit of the district the sum of twenty-five dollars, to be sued for and recovered either by his successors in office or by the town superintendent. The town superintendent (supervisor) may also sue the trustees for unpaid balances in their hands. It requires no vote of the district to authorize such suit to be brought, and a vote directing such suits to be brought, or not to be brought, is a nullity. Per Morgan, March, 1848.

An estimate of expenditures must be submitted to vote, item by item.

An item "for sexton, \$50" held to be illegal, being for an officer and purpose unknown to the law.

The trustees having presented an estimate for several heads of expenditure, amounting in the aggregate to \$1,800, and the vote having been taken

thereupon by asking each inhabitant when he deposited his ballot for district officers whether he voted "tax" or "no tax," without in any other manner submitting the propriety of the items severally, it was held that the tax payers have the right, not only to fix the amount of their contributions, but to specify the precise object to which every part thereof should be appropriated. The question should be submitted to them in such a form that every one may have the opportunity of offering amendments increasing or diminishing the amount to be appropriated to any of the enumerated objects, or of striking out. The proceedings not having been conducted in such a way as substantially to preserve this right, but, on the contrary, apparently to subject the voters to the dilemma of voting for the estimate as an entire proposition or voting against every part of it, they were held irregular, and were annulled.

One of the items in the estimate being "for sexton, \$50," it was held that the term "sexton," being unknown to the law as the designation of any district officer, the duties expected of him ought to have been so defined by the resolution as to show upon its face an intention to appropriate the money for services, like cleaning the school-house, making fires, etc., which are legitimate objects of taxation. It is not competent to a district meeting to create a new office having a salary attached to it, though it is competent to vote compensation for services, not incumbent upon the recognized district officers, but which are proper objects of expenditure. Per E. P. Smith, Deputy Superintendent, October 2, 1855.

Proceedings of district meeting set aside on account of fraud.

On an appeal from the proceedings of a special meeting, it appears that, at the meeting, several arrests of legal voters were made, whereby one party obtained an improper advantage.

The department will never sanction proceedings tainted with such fraudulent efforts to secure an advantage. The proceedings of one of the parties are marred by the appearance of an effort further to gain an advantage by over-awing the opposition through the presence and threats of a bully and fighter. The department will ever exercise the full extent of its powers to protect and defend those, whether in a minority or majority, against whom such influences are arrayed.

The proceedings of the meeting are, therefore, set aside and a new meeting ordered to be held. Per H. H. Van Dyck, Superintendent, January 21, 1861.

Absence from a school meeting, because it was supposed the business of electing a trustee was of minor importance, will not justify setting aside the proceedings of such meeting in voting a tax.

On an appeal from the proceedings of a district meeting, the ground of complaint, as stated, is that, the meeting being considered of "minor importance," but few persons were present; and, a small tax having been voted at said meeting to defray the expenses of a trustee in defending a suit, it is asked that the proceedings be set aside, the meeting having been called for the purpose of electing a trustee.

Whoever looks upon the election of a trustee as of "minor importance" deserves to have a tax levied upon him at every meeting in the district until his apprehension of having the best men in the district elected to office is fully awakened.

The reasons stated for setting aside the proceedings of the meeting are insufficient, and the appeal is, therefore, dismissed. Per V. M. Rice, Superintendent, June 16, 1862.

The department will not interfere in a case in which an order of the department could have no effect to change the condition of things already established, and will not, therefore, interfere.

On an appeal from the proceedings of a special meeting, and from the action of the trustees, it appears that the school-house site, as originally granted, was bounded on two sides by lands dedicated to public use as a burying-ground.



During the past year, a new school-house was built, under the direction of the trustees, and the same was located so as to cover a portion of the burying-grounds referred to. At a special meeting, H., who formerly owned and dedicated to public use the lands in question, offered to dedicate to public use, for *school purposes*, a portion of the aforesaid burying-ground, so as to enlarge the school-house site sufficiently to embrace the grounds upon which the new school-house stood. This proposition was accepted by the meeting. The trustees, thereafter, accepted the school-house from the contractor, and made certain payments thereon.

The appellants ask that the acceptance of the addition to the site be declared illegal and void, and that the contractor be directed to refund the money paid to him.

This is one of those cases in which no relief can be afforded by this department.

The simple declaration that the proceeding in relation to the site was illegal would have no force or effect to change in the least the condition of things already established by the fact of building the house upon a portion of the lands belonging to other parties. It is apparent upon the face of the complaint, that the action on the part of the said H. was unauthorized, and, of course, the acceptance by the district amounts to nothing, one way or the other. But there is nothing which this department can do to relieve the district from its embarrassment. No order from this department will be sufficiently potent to draw the money from the pocket of the contractor, and place it again with the trustees.

The issues are of a nature which only the supreme court can reach and affect. The parties aggrieved are those interested in the burying-ground, and their remedy must be sought in the courts.

Appeal dismissed. Per V. M. Rice, Superintendent, March 10, 1862.

A custom of delaying the organization of school meetings for one or two hours after the regular time has no sanction in good usage.

On an appeal from the proceedings of a special meeting, it appears that the meeting was called for six o'clock in the evening, and that before seven o'clock the meeting was organized, seventeen persons being present, and a tax of two hundred dollars voted.

The appellants ask that the proceedings of the meeting be annulled, because the meeting was organized in less than an hour after the time for which it was called, it being alleged that it is customary to delay the organization for one or two hours.

If the custom is as above alleged, it is well that a practice so vicious should be abandoned. There is no worthy justification for it. Undue haste should not be countenanced; but a delay of half an hour can hardly be regarded as undue haste. This department can do nothing to put aside the consequences of a neglect so inexcusable as that of the appellants, in not attending at the appointed hour for meeting.

Appeal dismissed. Per V. M. Rice, Superintendent, February 27, 1862.

The department will not require trustees to call a special meeting to rescind proceedings of an annual meeting, on the ground that the appellants were not present at such annual meeting.

On an appeal from the refusal of the trustees to call a special meeting as requested by certain inhabitants of the district, it appears that at the annual meeting a vote was taken authorizing the trustees to levy a tax for fuel, and to fence the school-house site. The appellants desire a special meeting called to rescind that vote, alleging that they were not present at the annual meeting, when the tax was voted.

The objects for which this tax was voted are legitimate and proper, and it is not the fault of the trustees, nor of the department, that the appellants were not present at the annual meeting, and neither should be put to trouble or inconvenience because of the neglect of the appellants to attend to their duty.

The appeal is, therefore, dismissed. Per V. M. Rice, Superintendent, February 21, 1862.

The proceedings of an annual meeting organized within half an hour after the time for meeting will not be set aside.

On an appeal from the proceedings of an annual meeting, it appears that the meeting was called for six o'clock. At half-past six it was organized, four persons being present. Two more came in directly, and the business of the meeting was transacted.

There can be no question as to the legality of the meeting, and, though it would have been no more than proper and just to have waited a short time for others to come in, I do not feel at liberty to set aside the proceedings for failure to do so. A sure way to prevent any such advantage being taken is to be at the place in time. Those who have it in their power to protect and preserve their own interests, and neglect to do so, should not call upon others to make good what their own indifference has caused them to lose. Per E. W. Keyes, Acting Superintendent, December 5, 1861.

Proceedings of an annual meeting where only two persons were present is set aside.

The regular annual district meeting was held without any previous notice, and evidently to the surprise of nearly all the inhabitants of the district. A chairman was elected, and also a clerk *pro tem*. Resolutions were offered and passed, and trustees and other school officers elected by ballot. At this meeting only two persons were present.

By a strange mistake the notices for the annual meeting set forth that the same would be held on the tenth of October, instead of the second Tuesday, as required by law. A meeting was accordingly held on the tenth, supposed by those present to be the annual meeting, and the usual business of an annual meeting was transacted.

This department cannot sanction the proceedings of two persons as of binding force and effect upon a district; especially not, when most of the inhabitants were prevented from being present by a misapprehension, arising from an error in the published notice.

The proceedings of both the meetings held as above stated, are declared invalid, and the district clerk is directed to give notice of a special meeting. Per E. W. Keyes, Acting Superintendent, December 3, 1861.

The election of a trustee will be set aside when opportunity for a fair expression of the voters was not given, whereby the result was uncertain.

On an appeal from certain proceedings of the annual meeting, in electing a trustee, it appears that the meeting was attended by many besides those entitled to vote, and on the motion to elect A. S. trustee for the ensuing year, it was impossible to tell whether the voting was confined to those legally entitled. The chairman, however, decided that the said A. S. was elected. Many of those present doubted the correctness of the decision, and consequently this appeal is brought.

It is evident to me from the proceedings that opportunity for a fair expression of the actual voters was not afforded. The evidence of the election of the said A. S. is not clear and satisfactory, and I deem it but just that the inhabitants should have what they asked for, an opportunity, by another trial, to put the matter beyond controversy. The election of the said A. S., is, therefore, set aside as uncertain, and a new election ordered. Per E. W. Keyes, Acting Superintendent, November 30, 1861.

A meeting of three persons, at which it is voted to build a new school-house and levy a tax therefor, set aside.

I cannot consider a meeting of three persons, at which a considerable tax is voted for building a new school-house, as a sufficiently authorized expression of the sense of the district upon so important a proceeding. However worthy the

purpose, the means have too much the appearance of a surprise, especially in view of the fact that several inhabitants were waiting outside, in the belief that no one had yet arrived to attend the meeting beside themselves. The proceedings are, therefore, set aside. Per E. W. Keyes, Acting Superintendent, July 22, 1861.

It does not follow of course that a petition to the trustees for a special meeting, however numerous signed, is to be granted.

On an appeal from the refusal of the trustee to call a special meeting, on the application of a majority of the voters of the district, it appears that the object of a new meeting is to rescind the action of a previous meeting changing the site and voting a tax to build a new house. The meeting which took this action was well attended, every voter in the district being present but one, and the vote in favor of the resolution to change the site was confirmed by 21 to 7.

The petition to call a new meeting bears date more than two months after the above decisive action had been taken. Meantime, the trustees had completed their tax list, and, at the least, had entered into negotiations concerning the sale of the old house and site. It is remarked by the counsel for the appellants that it would seem as though an application for a school meeting, made by a clear majority of the legal voters of the district, ought, upon the face of it, to be granted. The general principle enunciated is, doubtless, in its broad and unrestricted sense, true; but, in its application to individual instances, it may, in a majority of cases, be found unwise and unjust, for the reason that it is scarcely possible to recognize, in the statement of such general principles, the thousand and one conditions that render it inapplicable.

I can conceive of no good resulting from an effort at so late a day to disturb what has been so deliberately and fairly and decisively determined. If it is true that so large a number of the voters have changed their minds, it betrays a fickleness and instability of purpose that give little assurance that proceedings had at any future meeting will be permitted to rest.

I regard the discretion of the trustee as judiciously exercised, and the appeal is, therefore, dismissed. Per E. W. Keyes, Acting Superintendent, June 15, 1861.

Clerk cannot refuse to give notice of a meeting ordered by a majority of trustees, upon the ground of protest or refusal of third trustee.

This is an appeal from the refusal of the district clerk, to call a special meeting upon the order of a majority of the trustees.

The justification of the clerk is insufficient. The protest of one trustee should not be regarded as authority against the direction of a majority. Nor is it the duty or the right of the clerk to judge concerning the correctness, competence or legality of the proceedings of the trustees. If an order is presented to him, correct upon its face, he is to presume all preliminary proceedings to be just and legal. Any other construction of his powers and duties would leave the control of all district matters entirely in the hands of a subordinate ministerial officer.

No order seems necessary, however, compelling the clerk to act; as one of the trustees may give the notice required in case of the continued refusal of the clerk to act, the same as in the case of his absence or inability to act. Per H. H. Van Dyck, Superintendent, January 2, 1861.

A special meeting will not be ordered to act upon questions that have been deliberated and acted upon at successive meetings.

This is an appeal from the neglect or refusal of the trustee to call a special meeting, upon the request of a respectable number of the inhabitants.

The appellant fails to make out a case requiring the interposition of the department. The mere fact of a petition for a meeting, signed by a large number of inhabitants, is insufficient to create even a presumption as to the duty of the trustee to call such meeting. If it could be so regarded, then a minority, respectable in numbers, could always compel the trustee to call a special meet-

ing, and could thus keep the district distracted and unsettled upon any important issue, so long as they might choose to demand the calling of meetings.

It is in evidence that the meeting whose action the appellant disapproves, and which action he desires a special meeting to reconsider, was the third special meeting that had acted upon the question at issue.

It is a principle that has been recognized by the department that, when a question has been deliberately acted upon at successive meetings, the trustee is not required to call other meetings to reconsider the question thus determined.

In view of the facts and principles herein disclosed, it devolved upon the appellant to show, by obvious and well attested facts, that the action of the meeting was not a proper expression of the will of the district upon the question at issue. Failing in this, I find no sufficient occasion for subjecting the clerk to the trouble and labor of serving notices of another special meeting, so soon after a series of special meetings has been concluded.

The appeal is, therefore, dismissed. Per H. H. Van Dyck, Superintendent, April 12, 1860.

A district meeting is not bound by strict parliamentary rules; it makes its own.

This is an appeal from the proceedings of a special meeting. The objections to the proceedings are to the ruling of the chairman upon certain questions of order.

The department will not overrule his decisions where it was in the power of the meeting to reverse such decision on appeal. The failure of the meeting to take any action upon the point of order, must be regarded as an acquiescence in the ruling of the chair. So far as the binding obligation of common parliamentary rules is concerned, it must ever be held subordinate to the will of any organized meeting, every such assemblage being free to establish its own rules. As I do not find the merits at all affected by the proceedings complained of, I cannot, upon the ground of unparliamentary ruling, reverse the deliberate action of the meeting. Per H. H. Van Dyck, Superintendent, March 8, 1860.

An annual meeting, not adjourned to any particular time, called by the clerk at six o'clock, and organizing and transacting business before seven, is void.

This is an appeal from the proceedings of the annual meeting.

There is but one point made by the appellant that at all impairs the proceedings of the annual meeting. Unfortunately, however, that objection is material, and cannot be disregarded. The statute of April 12, 1858, provides, that "unless the hour and place of such (annual) meeting, shall be fixed by a previous district meeting, the same shall be held at the school-house at seven o'clock in the evening." It is in evidence that the time and place were not fixed by a previous meeting, but that the meeting was notified by the clerk to be held at six o'clock, that it was organized shortly after that hour, and that before the hour of seven o'clock it had transacted all its business and adjourned.

I have, therefore, no alternative but to declare the proceedings unauthorized, and they must of necessity be set aside, as being contrary to the statute. Per H. H. Van Dyck, Superintendent, February 3, 1860.

A motion to adjourn, while another question is pending, and a ballot being taken on it, cannot be entertained; and an adjournment thus effected is void.

At the annual meeting, a resolution was offered to elect three trustees, and the question was being taken by ballot on that resolution, when some of those offering to vote were challenged, and a discussion on the qualifications of voters arose, pending which a motion to adjourn for one week was made; the question was taken on the affirmative, and declared carried without the negative being taken. The appellant claims that the adjournment was legal, and that the business transacted after the adjournment was declared is void.

I cannot arrive at the appellant's conclusions. In the first place, no motion for adjournment, nor for any thing else, was in order while a vote on a previous motion was being taken. While strict parliamentary practice is by no means to be expected in the proceedings of district meetings, yet some observances are indispensable to protect the meeting from the factious opposition of a minority, from an oppressive rule of the majority, or from the arbitrary authority of the presiding officer. The rule here stated I consider to be of this nature. The entertainment of the motion to adjourn at that time was, therefore, unlawful, and the action upon it of no effect. The fact that the chairman declared the motion carried without calling for the negative vote would be sufficient to vitiate the proceedings, had the motion itself been in order, for to give the chairman power, at discretion, of declaring an adjournment, without taking a full expression of the meeting, is to invest him with supreme control.

The meeting not being legally adjourned, the proceedings had after the declared adjournment were regular and legal. Per E. W. Keyes, Deputy Superintendent, December 9, 1859.

Proceedings set aside for uncertainty, where, on a vote by ballot, more ballots were deposited than there were voters present.

A vote was taken upon the question of building a new school-house. The vote was taken by ballot, and the result showed more ballots than voters. Of course the department has no power to determine, in such a case, what is the will of the majority.

The proceedings of the meeting are, therefore, declared void for uncertainty. Per E. W. Keyes, Deputy Superintendent, October 27, 1859.

The proceedings of a district meeting will not be set aside because the said meeting was organized soon after the hour appointed, when but few of the inhabitants were present.

On an appeal from the proceedings of a special meeting, for the election of a trustee, it is alleged that the hour for the meeting was six o'clock; that the meeting had transacted its business and adjourned by ten minutes past six; that there were present but three persons, one of whom was the trustee elected; and that it is customary to wait one hour after the time appointed before organizing district school meetings.

If such is the custom in that district, it is high time it was abandoned; there is neither sense nor justice in appointing a meeting for one hour, and compelling those who are present promptly, like business men, to wait a full hour for the indolent, the indifferent and the shiftless to come.

The appeal is, therefore, dismissed. Per H. H. Van Dyck, Superintendent, February 2, 1859.

A special meeting for the purpose of directing the application of the public money will not be ordered after the trustees have made their arrangements for a school upon proper basis of division fixed by themselves.

On appeal from the refusal of the trustees to call a special meeting, it appears that the object of the meeting was to take into consideration what disposition should be made of the public money. As the annual meeting had passed without action being taken on that question, it was left, by common understanding, to be applied as formerly, in view of which understanding the trustees had made their arrangements for the winter term.

As any other disposition of the public money than that, according to the understanding, might seriously embarrass their proceedings, it is adjudged unnecessary and inexpedient to call a meeting for the purpose of considering that question.

The appeal is, therefore, dismissed. Per H. H. Van Dyck, Superintendent, December 13, 1858.

Trustees will not be directed to call a special meeting to take action upon questions which have passed beyond the jurisdiction of the inhabitants.

On appeal from the refusal of trustees to call a special meeting to reconsider a vote taken at the annual meeting, it appears that the annual meeting had authorized the trustees to raise \$100 to repair the school-house, and that the trustees immediately went to work and made out a tax list; contracted for the repairs; made an advance on the same, out of their own money, and commenced operations. This they had an undoubted right to do; the assumption of the appellant that the trustees were bound to wait thirty days is wholly untenable. The repairs were needed at once, if at all, and under the circumstances the promptitude of the trustees is commendable.

It follows, then, that a special meeting, if called, would have no power to rescind the action of the annual meeting. The trustees, therefore, acted within a reasonable discretion in refusing to call such meeting for the purpose named, it not being then in the power of the district to act upon the question. The appeal must be dismissed. Per H. H. Van Dyck, Superintendent, December 3, 1858.

An annual meeting held on the second Tuesday of October, though without notice, is legal, that being the day now prescribed by law.

This department has ruled, and does rule, that any meeting held on the second Tuesday of October, as required by the act of April 12, 1858, is legal. All have an opportunity of reading the law, and the presumption is that they had sufficient sense to comprehend it. Per H. H. Van Dyck, Superintendent, November 23, 1858.

The proceedings of a meeting will not be set aside because of neglect to administer the prescribed form of declaration to persons challenged, when it is shown that such persons were in fact legal voters at such meeting.

On an appeal from certain proceedings at an annual meeting, it appears that on a certain question, which is not stated, thirteen voters were challenged, to but one of whom any oath was administered. But it also appears that each one so challenged was a resident of the district, and owned or hired real property therein. Their right to vote is thus clearly established, and the proceedings should not be set aside for a mere informality in administering the oath, when it is shown that such informality has no effect upon the general result. Per H. H. Van Dyck, Superintendent, November 15, 1858.

Where three trustees are chosen in a district, and their terms of office are designated by lot instead of by vote, as the law directs, the election will be declared void for uncertainty.

At a district meeting it was resolved to have three trustees, and three persons were accordingly elected by *viva voce* vote, and the term that each one should serve was determined by lot or chance, and not by the votes of those present.

The objection to the proceedings of this meeting is valid. By section 6, chapter 151, Laws of 1858, it is required that the time which each trustee shall serve shall be decided by vote. Consequently, the election of these officers in the present case is void for uncertainty, the term for which either was elected not being designated. Per H. H. Van Dyck, Superintendent, November 15, 1858.

The department will not set aside the proceedings of a meeting to which a majority of the inhabitants of the district are opposed, because such majority, though having due notice, neglected to attend the meeting.

This is an appeal from the proceedings of a special school meeting. The case presented is not one requiring any action from this department. Due notice was given of a meeting to take into consideration the question of a change of site. A portion of the inhabitants saw fit to neglect their duty and did not attend the meeting. Thereby a minority of the inhabitants were enabled to control the action of the meeting.

There is but one way in which a majority can carry out measures of policy, and that is to present themselves at the meeting duly and properly notified.

It is no part of the duty of this department to make good, or, by its action, atone for, the neglect or indifference of the inhabitants.

The appeal is, therefore, dismissed. Per E. W. Keyes, Deputy Superintendent, September 11, 1858.

The proceedings of a school meeting, held at the unusual hour of half past seven o'clock in the morning, will be set aside unless there are peculiar conditions in the district to justify the call of a meeting at that hour.

A meeting was held at the hour of half past seven o'clock in the morning, the proceedings of which are appealed from, on the ground of the unseasonableness of the hour of meeting.

I cannot regard a meeting called at seven and a half o'clock in the morning as giving an opportunity to the inhabitants for a fair and deliberate expression of their opinions upon the matters under discussion, unless it is made affirmatively to appear that the circumstances of the district are so peculiar as to make that the best and most convenient time of meeting. It is not made so to appear in the present instance, and the appeal must, therefore, be sustained. Per H. H. Van Dyck, Superintendent, June 18, 1864.

Where a meeting is called by a single trustee, the others having vacated their offices, the call is legal, even though it may subsequently appear that the trustee was not legally elected.

On an appeal from the proceedings of a special meeting, it is claimed that the meeting was illegal and its proceedings void, from lack of authority on the part of the person assuming, as trustee, to call the same.

The facts of the case are that the meeting was called by an acting trustee, and that no other person was authorized to act in that capacity, those elected to that office, and claiming to hold it, having resigned.

*Held*, that it was sufficient that, under color of title to the office, there being at the time no competitor or rival claimant, and by advice of the commissioner and on petition of the inhabitants, the said acting trustee directed the clerk to call the meeting; and that, the meeting being legally convened, the proceedings, if not irregular, must be sustained. Per H. H. Van Dyck, Superintendent, March 31, 1858.

Trustees do not exceed their just discretionary powers in refusing to call a meeting to reconsider the action of a previous meeting, when the number of voters signing a remonstrance against such meeting is greater than the number of those petitioning for it.

At a regularly called and fully attended meeting of the district, it was voted by forty-eight to twenty-two, to raise a tax to repair and enlarge the school-house. Some time after the meeting, a petition signed by fifty-one voters of the district was presented to the trustees, asking that a special meeting be called to reconsider the proceedings of the former meeting. The trustees likewise received a remonstrance against calling such meeting, signed by sixty voters. The trustees met, and, after due deliberation, resolved to deny the petition.

*Held*, that their refusal was justly founded upon the evidence before them that a majority of the inhabitants were opposed to delaying or otherwise embarrassing the proceedings inaugurated under the direction of the meeting already held. I can, therefore, see no occasion to reverse the decision of the trustees in refusing to call another special meeting. Per H. H. Van Dyck, Superintendent, March 9, 1858.

Where the clerk is unable to serve the notices of a special meeting on account of illness, the trustees may depute any inhabitant of the district to serve them.

The facts in this case were as follows: The clerk, being unable to do it himself, suggested that his son might serve the notices of a special meeting; this suggestion was approved by two of the trustees, and the son of the clerk was authorized by them to serve the notices.

It has been decided that the clerk cannot act by deputy, and for the obvious reason that his is a ministerial office, the duties of which are definitely prescribed, and which he has no power to delegate. But the person serving the notices did not act by authority of the clerk, but by that of two of the trustees. That the trustees may thus delegate a ministerial duty to an inhabitant I have no doubt; they act judicially as well as ministerially, and have a discretion in the performance of certain duties not conceded to the clerk. It is, therefore, held, that the action of the trustees, in this respect, is legal. Per H. H. Van Dyck, Superintendent, February 25, 1858.

Where the clerk names a wrong hour in his notice of an annual meeting, and part of the inhabitants assemble at that hour and transact business, and part assemble at the hour of adjournment, and also transact business, both meetings may be set aside, and a new one ordered.

It appears that an annual meeting in 1856 adjourned to October 5, 1857, at seven o'clock, and the same is so recorded. By error, the clerk in the written notices of the meeting named six o'clock as the hour. A part of the inhabitants met at that hour, and transacted the ordinary business; a part, relying upon the adjournment, met at seven o'clock, organized, and proceeded to business. The latter appeal from the action of the former.

*Held*, that seven o'clock was the proper hour for meeting, but, a part of the inhabitants having been misled by the written notices, no advantage should be taken of such an official error, to deprive a considerable number of the inhabitants of a voice in the regular proceedings.

The proceedings of both meetings are therefore set aside, and the clerk of last year is directed to give notice of a new meeting within ten days after the receipt of this decision. Per H. H. Van Dyck, Superintendent, November 30, 1857.

Trustees will not be ordered to call a special meeting upon the application of a respectable number of inhabitants, where successive meetings for the same purpose have been called and held.

The question is whether the trustees have exercised their discretion rightfully, in refusing to call a special meeting upon the request of a respectable number of voters to have the meeting called. Such a request is ordinarily sufficient, but it is not all-sufficient. If it were so, a respectable minority could effectually prevent the consummation of any action by the majority. There must be some reasonable pretext for a meeting to render the refusal of trustees an abuse of discretion. In the present case, the object for which a special meeting is desired has already been passed upon by two successive meetings, at the last one of which every voter in the district was present but one. The trustees have, therefore, only exercised a reasonable discretion in the matter, and there is no occasion for any interference from this department. Per H. H. Van Dyck, Superintendent, November 7, 1857.

Under certain circumstances a district meeting may rescind a vote of a previous meeting, levying a tax, though a portion of that tax be collected at the time of such rescinding.

A regularly called special district meeting voted to levy a tax of \$350 to build a new school-house. A tax list and warrant were accordingly made out and put in the hands of the collector, to whom a portion of the tax was paid. Considerable dissatisfaction being expressed in regard to the levy of the tax on account of the small number of persons present when it was voted, another special meeting was called, at which the vote to raise \$350 for building a school-house was repealed, and a tax of \$200 was voted to repair the old school-house.

On appeal from the proceedings of this second special meeting, it was *held*, that, it having been already decided by this department (*Old Code Public Instruction*, page 55), that, at any time before the list and warrant are delivered to the collector, the inhabitants may rescind the vote by which it was levied, it would be thus clearly implied that the vote cannot be rescinded after the warrant is put into the collector's hands. A decision of the Supreme Court is positive and



emphatic, that, after a portion of the tax has been collected, the district has no power to repeal the resolution under which the tax was levied. (4 *Barb.*, 25.) This would seem to cover the case completely, and to decide the whole question at once. It is to be noticed, however, that the argument used in support of the decision does not apply at all to the present case; that argument being the manifest injustice of collecting a tax from a portion of the inhabitants, and then, by a reconsideration, to exempt the remainder from taxation. But here is no such condition, for the collector was directed to refund the amount collected, and it is believed this has been done. Now we are warranted in assuming that the case before us is not determined by the decision, the conditions and equitable interests involved being unlike, though the abstract terms of the decision comprehend both.

But it further appears that the original warrant of the trustees had run out, and that they refused to renew. This does not invalidate the original vote to levy a tax—but until the warrant is renewed it remains inoperative, and, in the opinion of this department, that is a condition of which the district may take advantage, and, by refunding the money collected, thus establishing the conditions under which their authority is recognized, proceed to exercise that power in the act of repeal. The exercise of the equitable powers of this department in setting aside proceedings strictly legal, or in the affirmance of those resulting from the assumption of doubtful powers, is to be deprecated, except when it becomes the only means of preventing the consummation of injustice or wrong. But in the present case, if the proceedings of the second special meeting were not strictly legal, as they are assumed to be, the department would have no hesitation in exercising the discretionary power with which it is vested, to declare the proceedings of the first meeting superseded by those of the second, for the tax voted at the first meeting appears, upon substantial evidence, to have been unnecessary, and that voted at the second meeting to have been entirely adequate to the present demands of the district. Per H. H. Van Dyck, Superintendent, October 31, 1857.

The proceedings of a meeting locating a site, in accordance with an award of arbitrators, to whom contending parties in a district had agreed to refer their differences, will be sustained.

In pursuance of an adopted resolution, several subjects of controversy in the district were referred to the decision of arbitrators. After hearing the proofs and allegations of the parties, the arbitrators made an award, by which they located the site of the school-house.

At a meeting subsequent to the award, the inhabitants, by a vote of 15 to 4, located the site at the place designated by the arbitrators, voted a tax for purchasing the site, and for removing the building to it.

The objection is taken, on appeal, that the arbitrators had no authority to determine the site, and that the district has another site so long as it chooses to occupy the same.

*Held*, that the tax is legal, not because of the award, but because the inhabitants elected to fix the site in the place which the arbitrators pointed out, as they had good right to do, irrespective of the award. Per H. H. Van Dyck, Superintendent, May 23, 1857.

The Superintendent will set aside the proceedings of a meeting voting an exorbitant sum to pay in advance the rent of a school-house site for a number of years.

An appeal is taken from the proceedings of a meeting, a resolution of which directed the trustees to levy a tax of \$150, for the purpose of paying the rent for a term of twelve years on a lot which was then, and had been for about twenty years, in possession of the district, and occupied as a site for a school-house. The appellants state that three dollars and fifty cents per annum is the rent which has heretofore been paid for said lot, and that \$150 is a most unreasonable price for the fee simple. The evidence shows that the value of the fee of the site does not exceed thirty dollars.

It is, therefore, held by the department that there is no adequate consideration for an agreement to pay \$150 for a twelve years' lease of the site; that the appeal must be sustained, and that the resolution and proceedings under it must be set aside. Per H. H. Van Dyck, Superintendent, May 22, 1857.

A meeting, called by two trustees without consulting the third, will not be set aside when the third trustee attended the meeting and participated in the proceedings.

A meeting was called by the majority of the trustees, without consulting the third, and, upon this ground, the third trustee asks that its proceedings may be declared void. At the meeting every voter in the district, excepting one who was absent from home, was present. The third trustee was present and voted.

Held, that the trustees who united in ordering the call were unquestionably wrong in exercising the power without their colleague, and that, if any considerable part of the inhabitants had declined or omitted to take part in the proceedings, this defect in the order for its call might have been regarded as fatal.

Where, however, the notice has the effect of convening all the inhabitants, with the exception of a single individual, whose vote, if present, would not have affected the result, the Superintendent feels warranted in disregarding the objection, when brought by a person who himself disregarded it, by participating in the proceedings of the meeting. Per H. H. Van Dyck, Superintendent, May 14, 1857.

## PROPERTY.

Where property in the possession of public officers has been stolen or destroyed by fire, without negligence on their part, they are not bound to make good the loss.

It has been settled by the supreme court, in the cases of *Supervisors of Albany County v. Dorr* (25 Wendell, 440), and *Browning v. Hanford, sheriff* (5 Hill, 558), that a public officer, in whose possession property has been destroyed by fire or for want of care, or from whom money has been stolen without negligence or any default on his part, is not bound to make good the loss. Per E. Peshine Smith, Deputy Superintendent, April 17, 1855. (*Letters*, vol. 2, p. 347.)

Supervisor should take charge of all property bequeathed to a town for the benefit of common schools, when no other person is specified. He should communicate the fact of his doing so to Superintendent of Public Instruction.

Where property is bequeathed to a town for the benefit of the common schools therein, without naming any particular officer or person as trustee of the fund, the property should be delivered over to the supervisor, who is the financial officer of the town. As soon as he receives the property the supervisor should report the fact to the Superintendent of Public Instruction, who will advise with him as to its investment and in regard to the disposition of the interest. The duties of the supervisor in regard to such trusts are stated in article 2, title 3, chapter 555, Laws of 1864. Per V. M. Rice, Superintendent, February 13, 1866. (*Letters*, vol. 5, p. 138.)

Statute provides for a sale of property only "when a district is annulled, and portions thereof are annexed to other districts."

The facts show a mere division of a joint district. Changing names cannot change facts. In this case, the fact is that a new district (7) was formed from a part of joint district (8.)

But, independent of any question as to whether the action of the board amounted to an "annulling" of the district, the statute provides for a sale of

the property only "when a district is annulled and portions thereof are annexed to other districts."

The part of the sentence which is quoted, is regarded as furnishing a definition of what is meant by "annulled." If, however, this be wrong, and the quoted words are regarded as an independent provision, it leaves the difficulty that both conditions must concur to authorize a sale. In the case of No. 8, no part was annexed to any other district. Per E. Peshine Smith, Deputy Superintendent, August 14, 1855. (*Letters*, vol. 2, p. 525.)

The property of a district is to be sold "when a district is annulled, and portions thereof are annexed to other districts," and there is no provision for sale unless these conditions are fulfilled.

When a district is divided simply, and two districts are formed from it without the addition of another territory, portions of it are not annexed to other districts, nor is any portion of it annexed to a (singular number) district. This consideration appears to fortify the conclusion which would be drawn from the use of the word "annulled," the signification of which is "reduced to nothing." A district can hardly be said to be reduced to nothing while its school-house remains with a territory attached thereto of sufficient extent to be still maintained as a district.

If the law justifies a sale of district property in any case (after payment of debts), the statute imperatively requires the division of the remaining proceeds among the several inhabitants, in the ratio of their assessments, and the receipt of each one, or his written assent to a different disposition of the same, would be required. Per E. Peshine Smith, Deputy Superintendent, March 22, 1855. (*Letters*, vol. 2, p. 274.)

## PUBLIC MONEY.

Public money cannot be paid for wages of a past year. In other words, public money apportioned for any year must be expended for services performed within that year. Per Dix, March 26, 1838.

The county treasurer is bound to pay over to each town all the school money apportioned to it and received by him from the State treasury. He cannot retain a percentage for receiving and disbursing, out of the money in his hands. Whatever claim he has is a charge against the county. Per Spencer, October 12, 1840.

When the district has given no direction, and the trustees have already appropriated the public money to a particular term of school, the district has no further control over the disposition of it. In the absence of any specific directions by the district, the trustees can apply the money as they may deem best for the interests of the schools. Per Spencer, June 15, 1841.

The wages of a teacher employed for the winter term may be paid from the school money to be received the next spring. Per Young, November 28, 1842.

In the absence of any specific directions by the district, the trustees may apply the public money to the summer and winter terms of a school in such proportions as they may deem just. Per Young, January 10, 1843.

Town superintendents (supervisors) can pay over public money only upon the written order of the trustees, or a majority of them, to the teacher entitled to receive the same. Per Morgan, May 29, 1851.

The public money apportioned for one year cannot be applied to the payment of teachers' wages of a previous year, except when a term embraces a portion of two years, in which case the public money of either year may be applied indiscriminately to that term.

The appellees (two of the trustees) gave an order upon the town superintendent of Hoosick for ten dollars, to be paid out of the apportionment of public money for 1849, in favor of the teacher for the summer term of 1848. The public money apportioned for one year cannot be applied to the expenses of a previous year, except when the term embraces a portion of two years; in which case the public money of either year may be applied indiscriminately to that term.

The trustees could not legally apply any of the apportionment for 1849 to the payment of the teacher of the summer term of 1848.

The appeal is sustained. Per Morgan, April 3, 1849.

The illegality or irregularity of the election of trustees is no excuse for a town superintendent (supervisor) for refusing to pay over the public money, upon the order of such trustees. He must be governed by the report of these officers, made in conformity to law.

The town superintendent of the town of Spencer, Tioga county, declined to pay over, on the order of the trustees of district No. 3, in said town, in favor of a duly qualified teacher, a portion of the school moneys apportioned to said district, and from this act the trustees appealed to the county superintendent, who sustained the appeal, and ordered the town superintendent to pay the money over, for the purposes and in the manner prescribed by law. Town superintendents (supervisors) will not be permitted to inquire, as in this case, on being presented with a written order, signed by the trustees of a district, into the validity of the appointment or election of the persons claiming to act, and who are acting as such officers. Such an order, duly receipted by the person in whose favor it may have been drawn, would be a perfect protection to him. It is not pretended that this money is withheld for any defect in the last annual report, or that schools have not been taught in conformity with the requirements of law. As a general principle, collateral matters cannot be drawn in question, involving judicial cognizance, by any officer, when called upon to discharge a mere ministerial duty. And the town superintendent in this case assumes to decide who are not the trustees of the district, a matter entirely beyond his jurisdiction. The decision of the county superintendent, therefore, ordering him to pay over the money to the trustees as aforesaid, was correct, and is hereby affirmed. Per N. S. Benton, January 29, 1846.

The public money must be applied to the payment of the wages of qualified teachers, and for no other purposes. Debts due the district, or bought by the trustees, cannot be offset against the wages. Nothing but payment to, or on the order of, the teacher, is a compliance with the law. Per Spencer, April 23, 1839.

Trustees, in the absence of express directions from the district, may, in their discretion, apply the public money for the support of schools as they may deem proper; but when they apply more than two-thirds thereof for the support of the winter school, the Superintendent of Public Instruction will interfere.

It seems that the trustees applied more than two-thirds of the public money for the support of the winter school, in 1846, leaving the balance for the summer school. In the absence of any express direction on the part of the district, the trustees have a legal right, in their discretion, to apply the public money as they may deem proper, which discretion will always be controlled by the department, when those officers apply more than two-thirds of the public money to the winter schools, leaving the balance for the summer schools. The act which should have been appealed from was the payment of nearly all the public money toward the support of the winter school in 1846. The trustees having the strict legal right to do as they have, and no legal steps having been taken to correct it (more than thirty days having elapsed before the bringing of the appeal), as a legal consequence they are bound to make out their rate bill in accordance with their former acts, that is, apply the

residue of the public money to the summer school, and make out their rate bill for the balance. Per N. S. Benton, April 8, 1847.

The statute directing town superintendents (supervisors) to pay out public money only to qualified teachers, duly employed, upon the order of the trustees employing them, was enacted for the purpose of preventing embezzlement by trustees, and if they pay the public money to a trustee or other person than the teacher, without his order, they do it at their peril.

This is an appeal taken from the action of the trustees in school district No. 9, in the town of Otto, Cattaraugus county, by a teacher duly employed in said district during the last winter, on the ground of withholding from him a portion of his salary, amounting to the sum of \$15.86. The appeal is without answer.

The appellant testifies that while he was engaged in the employ of said trustees, two of them, to wit, Isaac Reed and Daniel R. Grinals, wrote an order for the residue of the public money apportioned to said district in 1853, making it payable to appellant; that Reed went without appellant's knowledge or consent and drew said money in appellant's name from the town superintendent of Otto, which money amounted to \$15.86, as aforesaid; that when appellant closed his term, said trustees (two of them) gave him another order upon said town superintendent for \$52.56, to be paid in part of the residue of the public money apportioned in 1854; that said superintendent paid \$36.64 on said order and retained it in his possession, but refused to pay any further amount, saying that he had paid the remainder to said Isaac Reed, one of the trustees of said district.

The provision of the law which directs town superintendents (supervisors) to pay out public money only to qualified teachers duly employed, upon the order of the trustees employing them, was enacted for the express purpose of preventing the opportunity of embezzlement by trustees. If in the face of this fact public money is paid to a trustee, in the name of a teacher or otherwise without a properly attested order from the person to whom it is due, the town superintendent (supervisor) does it upon his own responsibility. In the case in controversy, the trustee, Reed, is liable for the means by which he obtained the money, and the town superintendent of Otto is responsible to school district No. 9 for the amount paid by him to Reed, and he must make good the deficiency, looking to Reed for reimbursement.

This appeal is accordingly sustained, and the town superintendent of Otto is hereby ordered to pay to said Hosea Edwards, teacher aforesaid, the sum of \$15.86 claimed by him, and to preserve district No. 9 good in that amount, not charging said district for the amount paid illegally by him to said Isaac Reed. Per V. M. Rice, November 11, 1854.

Authority of the district to interfere with the action of the trustees in dividing the public money.

There is no doubt that the district may direct the trustees how to divide the money between the different terms, and, in the absence of any such direction, it is equally clear that the matter is left to the discretion of the trustees. In the present instance, the annual and a subsequent adjourned meeting passed without any action being taken in regard to the public money, nor was it till after the school had commenced, and the trustees had completed their arrangements for its support by dividing the money, that any movement was made in regard thereto by the district.

It has been repeatedly held by the department that, where the district has given no direction, and the trustees have already apportioned the public money, the district has no further control over it. It was competent for the district to act on this question at their annual meeting, and their neglect to do so invested the trustees with the control of the matter. It is too late, after the trustees have exercised the authority thus duly vested in them, and the school has commenced to change the entire policy thus established. Per H. H. Van Dyck, Superintendent, January 20, 1858.

In the apportionment of public money, trustees should be governed by the wishes of the district; therefore, when the inhabitants at a district meeting adopt a resolution in reference to the apportionment of the public money which was not by its terms restricted to one year, the trustees should regard it as continuous in its operation.

It is stated to have been the custom of the district to apply two-thirds of the public money to the winter term, and the remainder to the summer term. The appellant desires this apportionment to be continued. He states that no vote was taken on the subject of a division at the last annual meeting, under the impression probably that such direction was in force for a period longer than a year.

It is not perceived that the statute requires the inhabitants to reiterate their wishes annually in this respect, and as it is a matter in regard to which the interests of the district are not liable to change from year to year, there is no reason of policy requiring such an interpretation. If the last resolution adopted by the district in relation to this subject was not by its terms restricted in its operations to a year, or some other definite period, the trustees should regard it as still in force and as furnishing the rule for their action.

As it does not appear from the appeal what the fact may be in relation to this point, the Superintendent can only indicate the principle which should govern.

It is inferred, from the statements of the appeal, to be quite probable that a portion of the \$52, said to be due to the teacher for wages, was earned by service rendered prior to the first day of last January, in which case it should not be compensated from the money apportioned this year, but a rate bill should be issued (levied), the amount collected upon which shall be employed to remunerate said teacher, or to replace the sum, if it has been borrowed from the apportionment of this year.

The appeal is sustained. Per E. P. Smith, Deputy Superintendent, April 24, 1855.

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## RELIGIOUS MEETINGS.

Use of school-house for religious meetings considered.

The quiet assembling of orderly persons for religious instruction, not at unreasonable hours, cannot be a serious injury to the school-house, nor to the educational interests generally of the district.

At all events, I am not disposed to interfere with the discretion of the trustees in regard to a proper custody of the school-house, until the abuse of that discretion is clearly proven by evidence showing that positive injury and damage has resulted from allowing the school-house to be used for other than school purposes. Per H. H. Van Dyck, Superintendent, March 15, 1859.

An application to close the school-house against religious meetings must show some injury resulting from such use.

An appeal is taken from the action of the trustees in allowing the school-house to be used for religious purposes.

This complaint is not denied, but, as the appellant does not show that any injury results to the school-house nor to the district from the holding of meetings, there is not presented any grievance demanding the interposition of this department. Per H. H. Van Dyck, Superintendent, January 3, 1859.

School-house may, under certain circumstances, be used for religious meetings, lectures, etc.

It is alleged and not denied, that the school-house is used for the purpose of holding religious meetings occasionally upon Sunday. It is not alleged that any injury, damage, or loss is sustained by the district in consequence of these meetings.

The trustees have the custody of the house, and their right to allow it to be used for other than school purposes under such restrictions as will prevent any interference with its legitimate and primary use is nowhere limited by statute. This department will not interfere with the action of the trustees in this matter, except upon due proof of injury or loss to the district, resulting from the use of the house for other than school purposes. I am disposed to hold, with a previous opinion of this department, found in *Randall's School System*, 220, that the school-house may be used, out of school hours and when not wanted for district purposes, for religious meetings, Sunday schools, lectures, or any other moral, literary or useful purpose, with the approbation of a majority of the district, and consent of trustees. Per H. H. Van Dyck, Superintendent, January 7, 1860.

Trustees cannot, under any circumstances, be required to open the school-house for religious meetings.

This department, in its late action, has favored the policy of opening the school-house for religious and other worthy objects, when not wanted for school purposes. Where this power is exercised by the trustees, within the limits of a proper discretion, and regard for the district property, the department will not interfere.

But this is very different from compelling the trustees to open the house for such purposes. They cannot, as trustees of the district, be compelled to do any act not specifically within the range of duties prescribed. They are under no obligation to yield, even to the unanimous wish of the district, to open the school-house for other than school purposes; and for the reason that they are not elected as guardians of the moral or religious interests of the district, but of its educational interests. They cannot be compelled to take action outside of their official relations. For their refusal to comply with the wishes of the district in matters outside their official relations, there is no remedy but to elect others in their places, as fast as their terms of service shall expire. Per H. H. Van Dyck, Superintendent, June 7, 1860.

Trustees will not be ordered to open the school-house for religious meetings.

No denomination has a right to the use of the school-house for religious or other purposes. Whoever occupies it for other than school purposes does so by sufferance only. The trustee who allows such privileges to be exercised does so without the sanction of any statute law, and is personally responsible for any injury to the property caused thereby.

No inhabitant of the district has a right to demand any thing from the trustee as an officer, which he is not lawfully bound to grant; and this department has no authority to order him to do any thing not required or contemplated by the law prescribing his duties. Consequently, the Superintendent has not authority to order the trustee to open the school-house for other than school purposes. Per V. M. Rice, Superintendent, May 5, 1862.

Religious exercises are not a part of district school exercises, and, therefore, no portion of the regular school hours is to be consumed in conducting them.

A teacher has no right to consume any portion of the regular school hours in conducting religious exercises, especially where objection is raised. The principle is this: Common schools are supported and established for the purpose of imparting instruction in the common English branches; religious instruction forms no part of the course. The proper places in which to receive such instruction are churches and Sunday schools, of which there is usually a sufficient number in every district. The money to support schools comes from the people at large, irrespective of sect or denomination. Consequently, instruction of a sectarian or religious denominational character must be avoided, and teachers must confine themselves, during school hours, to their legitimate and proper duties. Per V. M. Rice, February 5, 1866. (*Letters*, vol. 5, p. 123.)

## REPAIRS.

Repairs in the way of removing a desk and substituting a table approved as necessary.

On an appeal from a tax list made out by the trustee, the complaint is that the trustee has, without authority, removed a desk from the school-room, and provided in its place a table and chair. I infer that the appellants have little idea of the conveniences and necessities of school-room furniture. If they had, they would never object to any reasonable expense incurred in substituting a table and chair for a desk and bench. But, aside from the convenience to the teacher which is thus promoted, it is in evidence that the room thus occupied by this cumbrous, unseemly and awkward desk was absolutely needed for class exercises—there being no place where pupils in class could be accommodated without exposure to the burning heat of the stove. Under these circumstances, I can not but regard the alteration as comprised under the head of “necessary repairs,” for which the trustee is authorized to levy a tax not exceeding ten dollars. Per H. H. Van Dyck, Superintendent, April 16, 1861.

Where a district has voted to make certain repairs to the school-house at a certain expense, and these repairs have been made under the direction of one trustee, the other trustees will be required to unite in making out a tax and warrant for the expenses thus incurred, to the amount voted.

At a district meeting it was resolved to repair the school-house, and a committee was appointed to report in regard to the plan for repairing, and the necessary expense. Their report set forth what repairs were expedient, and stated that they could be effected by raising the sum of twenty dollars. This report was adopted by a vote of thirteen to six, and the repairs were made under the direction of one trustee and the committee before mentioned, without the consent or approval of the other two trustees, and they refuse to unite in making out a tax list for the amount thus expended.

*Held*, that the direction of the voters to repair the school-house, and fixing the extent and cost of the repairs at twenty dollars, was equivalent to voting that sum, and the trustees have no excuse for refusing to make out a tax list therefor. The error of the trustees consists in their assuming to judge of the expediency of the repairs. This was settled by the district, and the trustees are bound to acquiesce in and execute its will. Per H. H. Van Dyck, Superintendent, July 17, 1857.

Trustees may make any repairs on school-house, pursuant to the direction of school commissioner.

Section 50 of title 7 of the consolidated school act of 1864 declares: “They, the trustees, may make any repairs pursuant to the direction of the school commissioner.” Should a school meeting pass a resolution as follows, viz.: “Resolved that the trustees be directed to repair the school-house and make it comfortable for school purposes,” I should think it advisable and safest, thereupon, before making any very extensive repairs, to procure the direction of your school commissioner, specifying what repairs are to be made.

In his order directing the trustees to make the repairs, he would do well to commence with a preamble, setting forth that, whereas the inhabitants of school district No. —, of the town of —, did, at a school meeting legally called and held at the school-house in said district on the — day of October, 1865, pass the following resolutions, viz. (give the resolutions), and whereas the trustees of said district, viz. (giving their names), have requested me to designate such repairs as it shall deem proper to be made, pursuant to the resolution, and to a direction given by me for making repairs, as provided by section 50 of title 7 of the consolidated school act of 1864, now, therefore, etc., ordering specifically the repairs to be made. The commissioner cannot authorize the trustees to build anew, but merely to repair what has been formerly built or constructed. Per V. M. Rice, Superintendent of Public Instruction, October 27, 1865. (*Letters*, vol. 4, p. 417.)



## RESIDENCE — NON-RESIDENT PUPILS.

An inhabitant cannot gain a residence in another district by taking a portion of his family with himself thereto, so as to send his children to school therein.

The following statement of facts is submitted by the parties :

Barclay Miller owns a farm in district No. 5, upon which he lived till the spring of 1847, when he removed to another farm in district No. 12, leaving his son in the occupancy of the farm in No. 5.

On or about the 25th of November, 1848, a district school was commenced in No. 5, to which Mr. Barclay Miller sent part of his children. Upon the representation of the teacher that the school was already too large, the trustees directed him to dismiss Mr. Miller's children from school.

Whereupon Mr. Miller came with his children and a part of his furniture to his son's house in No. 5, leaving his wife at his house in No. 12. His son went to the farm in No. 12, but left his wife at the house in No. 5. Mr. Barclay Miller has, since this arrangement, sometimes lodged at his house in No. 12, and his son has also occasionally lodged at the house in No. 5. Barclay Miller took with him to No. 5 his horses and milch cows, but had stock on both farms, and has since killed his hogs at the house in No. 12, and there packed the pork.

Under this statement of facts, Barclay Miller cannot claim to be a resident of district No. 5. The trustees have power to dismiss his children from the school, or, if they permit them to attend, they are not entitled to share in the public money of the district, nor can they be lawfully enumerated as children residing in the district. Mr. Miller is a resident of No. 12, and his children must be there enumerated. Per Morgan, January 11, 1849.

A resident of a district is not responsible for the tuition of a non-resident pupil who simply boards with the former, unless the trustees notify him at the commencement of the school that he will be held responsible for the tuition.

In this case the appellant represents that the trustees have charged him eighty-two cents for the tuition of Erastus Hibbard, the son of a non-resident of the district, and who was a mere boarder in his house; and he alleges, in express terms, that he did not send him to the school nor engage to pay his tuition, and that he had no control nor jurisdiction over him. No answer has been put in by the trustees, although a copy of the appeal, duly verified, was served upon one of their number on the 28th of April last. The statement of the appellant, therefore, must be taken to be true, and, under such circumstances, he cannot be regarded as legally liable for the tuition of the boy. If the trustees had designed to hold him responsible, it was their duty to have apprised him of the fact at the commencement of the term. Not having done so, they must look to the father of the boy.

It is, therefore, ordered that the trustees strike from the rate bill (tax list) the charge against the appellant for the tuition of Erastus Hibbard. Per Morgan, May 18, 1849.

It is illegal for trustees to enumerate children in their districts between the ages of five and sixteen, unless they compose a part of the family of their parents or guardians or employers, if such parents or guardians or employers reside at the time in such district.

The trustees in district No. 5, in the town of Davenport, included in their annual report, dated December 31, 1848, sixty-two children under sixteen and over five years of age, attending a private school under charge of S. D. Ferguson. The children attending this private school had parents residing mostly in New York and Philadelphia, and the parents of none of them in the district. Five of said sixty-two children were orphans. It was not known to the department whether the said orphans were supported by Mr. Ferguson, or were boarded like the rest, or were sent to school by their guardians, but the latter is supposed to have been the truth.

The school law, section 118, of 1847, directs the trustees to include in their report all children over five and under sixteen years of age, who shall, at the date of such report, actually be in the district, composing a part of the family of their parents or guardians or employers, if such parents or guardians or employers reside at the time in such district. From this law it would seem to be very clear that not one of the sixty-two children attending Mr. Ferguson's school could be lawfully enumerated in the annual report of the trustees.

The trustees of district No. 5 were, therefore, wrong in including these children in their report. Per Morgan, March, 1849.

Children of temporary residents are to be enumerated in the annual reports of trustees.

The language of the law is that "all children actually residing in the district on the first day of January, although such residence may be temporary, shall be included in the reports of the trustees." And, again, "All children included in the reports of the trustees of any school district shall be entitled to attend the schools of such district."

These provisions were evidently intended especially to meet the case of the children of laborers on our public works, and others temporarily residing in school districts. Per Young, May 27, 1842.

When an inhabitant moves from one school district into another for the purpose of avoiding an enumeration of his children in the former district, and immediately after the enumeration moves back, the town superintendent (school commissioner) should apportion the money drawn on account of his children to the former district.

In this case the appellants transferred their residence from joint district No. 3, Cherry Creek and Ellington, where they have for several years resided, to district No. 7 in Cherry Creek, on the 30th of December last, with the obvious intention and design of having their children enumerated in the latter district, where they generally attend school, owing to some difficulties existing in district No. 3. On the 1st of January, both the appellants returned to their former residences in the latter district, where they have since remained, and which is their permanent residence.

The town superintendent, under these circumstances, very properly refused to sanction the fraudulent attempt to evade the spirit and intent of the law, and apportioned the money drawn on account of their children to district No. 3. In this he has been sustained by the county superintendent, whose decision must be affirmed. Per S. Young, April 10, 1844.

Children of non-residents are not entitled to attend a district school without permission of the trustees, and upon such terms as may be agreed upon. They cannot be permitted to share in the public money appropriated to the district under any circumstances. Per Spencer, March 26, 1841.

The power to admit to the district schools non-resident pupils is vested by statute in the trustees exclusively.

The inhabitants of district No. 1, Elba, at their annual meeting, September 4, 1855, passed a resolution to exclude non-resident children from the district school. An appeal was brought.

So much of the resolution as assumes to close the school against pupils from other districts is unauthorized. The trustees are invested with the power to admit such pupils by the express terms of the statute. It is their duty to prescribe the conditions of admission, and they ought to be such as to indemnify the district against any increased expense resulting from the attendance of non-residents. Proper security, moreover, ought to be taken in advance for the payment of any bills for tuition to which such pupils may be subjected, as they cannot be collected upon a rate bill or by warrant. Per E. P. Smith, Deputy Superintendent, October 20, 1855.

What constitutes residence.

Trustees have the authority to exclude non-resident pupils from the district school.

This is an appeal from the refusal of the trustees to allow one Eveline Oaks to attend the district school.

The said Eveline Oaks is a minor and a relation of the appellant. Her mother, a widow, resides with her family in district No. 9 adjoining. The appellant fails to show that it is the intention of the child or of the mother to change the residence of the child from district No. 9 to the district from which the appeal is brought. No such intention being shown, the legal doctrine that the residence of the parent is the residence of the child prevails, and the residence of Eveline Oaks must be regarded as being with her mother in district No. 9. She is, therefore, not entitled to any privileges in the district from which this appeal is brought, and the trustees of the latter district have exercised a just and legal discretion in excluding her from the school. Their action must, therefore, be approved, and the appeal be dismissed. Per H. H. Van Dyck, Superintendent, February 8, 1860.

Where children whose home has been broken up are brought to the residence of a grand father to find care and protection, for an indefinite period, they become residents of the district in which such grandparent lives.

An appeal is taken from the decision of the trustees of a district refusing to admit certain children into the district school, or to share in the public moneys thereof.

The children whose admission is thus refused are within the age prescribed to entitle them to the privileges of the school, and are residing with their grandfather, an inhabitant of the district. It also appears that the home of the parents of these children has been entirely broken up, and that they are brought to the residence of their grandfather to find the care, protection and privileges of a home.

The ground of objection to their admission is, that they are not residents of the district.

*Held*, that they are residents of the district in the fullest sense, as implied by the statute, and, as such, entitled to a share in the public moneys apportioned to the district in which they reside. Per H. H. Van Dyck, Superintendent, September 28, 1857.

Children attending an academy or boarding-school are to be enumerated by the trustees for the purpose of drawing public money only where their parents are actually residents of the district in which such academy or boarding-school is situated. Per V. M. Rice, Superintendent of Public Instruction, April 12, 1854. (*Letters*, vol. 1, p. 12.)

Where a child goes into a district to get employment, and not for the purpose expressly of attending the school, he is a resident of such district, and entitled to a portion of the public money apportioned to district, as also to share in the privileges of the school.

What constitutes a child a resident of a district depends upon circumstances. If the child removes to a district for the sole purpose of attending school in such district, the parents or guardian meanwhile residing elsewhere, such child does not become a resident of the district, so as to be entitled to share in the distribution of the public money. But where the child goes into a district for the purpose of obtaining employment, and of remaining in such district, the employment, and not the school, drawing him to such district, in such case, he would be entitled to the privilege of the school, and to share in the public money apportioned to the district. Per S. D. Barr, Deputy Superintendent, December 14, 1865. (*Letters*, vol. 4, p. 675.)

Question of residence sufficient to entitle a pupil to the privileges of the school considered.

This is an appeal from the action of the trustees in excluding from the school one Mercy C. Sweet, upon the ground that she is a non-resident.

The evidence establishes, I think, that the relations subsisting between the said Mercy C. Sweet and the appellant are such as to make the home of the appellant the residence of the said Mercy C., whereby she is entitled to the privileges of the district school. The primary object of the pupil in coming into the district appears to be to find a home in the family of the appellant, and to render service in labor as the consideration for such home.

It is always safer to err upon the side of liberality than of exclusion in these matters where any doubt is found to exist; but, in the present case, the testimony appears to admit of no doubt.

The trustees are, therefore, directed to admit the said Mercy C. Sweet to the privileges of the school. Per E. W. Keyes, Acting Superintendent, December 23, 1861.

The question of residence to entitle a pupil to the privileges of school to be liberally construed in favor of the pupil.

It is proper that the trustees should use all due precaution to prevent an abuse of the privileges of the district, and that the pretext of service or employment should not be used to cover a primary and special purpose of attending school. On the other hand, a liberal construction of the law and application of the powers of trustees may be rightfully extended toward those inhabitants of a free school district who pay their proportion of taxes for the support of school, but who, having no children to receive its advantages, desire to introduce members into their family for society or service, or both, and to extend to them the advantages of education which their own children might enjoy. Per E. W. Keyes, Deputy Superintendent, April 28, 1863.

Facts which prove residence in opposition to the affidavit of the party.

Appeal is taken from a decision of the supervisors of the towns of Castleton and Southfield, Richmond county, on an application made to them to fill a vacancy, claimed to exist in the office of trustee in district No. 1, in said towns, the supervisors having decided that no vacancy exists.

The only question is one of residence, and relates to the change of residence of Jas. O. Ludlow, who, it is claimed, has removed from the district, thereby vacating the office of trustee, to which he was elected in 1856. In support of this claim, it is shown that previously to last spring Mr. Ludlow resided in said district with his family, and did business therein; that some time in the spring he sold out his store in said district, and has since that time done no business in the district in his own name. Further, in May last, the said Ludlow leased a house in the city of New York, for three years, and removed his family there; that his family still reside there; that his name appears upon the door of said house where his family reside; that his name also appears in the Directory of said city as residing therein, and at the street and number where his family reside and his name is found, and of which premises he is known to have taken a lease. Also, that he himself resides at said place with his family.

Opposed to this evidence is the affidavit of Mr. Ludlow himself, averring that he has been for the last sixteen years a resident of said district No. 1, and that he has not removed from said district.

To my mind, no clearer case of removal could be made out. His affidavit to the contrary, establishes nothing more than that he desires to regard district No. 1 as his residence. But that does not make it such. I can come to no other conclusion than that Mr. Ludlow is no longer a resident of district No. 1, and that, in consequence of his removal from said district, there exists a vacancy in the office of trustee, which the district or the supervisors are competent to fill. Per H. H. Van Dyck, Superintendent, October 12, 1858.

Adults may be admitted to school on the same terms as non-residents.

Adults are not by law entitled to the privileges of common schools, but this department would not discourage trustees from admitting them upon the

same terms as non-residents. But, when such pupils commence attending school, there should be a distinct understanding between them and the trustees as to the price they must pay for their tuition; and in no case can they be admitted to a participation in the public money. Per V. M. Rice, Superintendent, December 8, 1854. (*Letters*, vol. 1, p. 438.)

A meeting will not be ordered to enable the inhabitants to take action upon the question of admission to the school of non-resident pupils.

This is an appeal from the refusal of trustees to call a special meeting at the request of a respectable number of the inhabitants.

The object for which the said meeting was to be called was to consider the propriety of admitting pupils to the school from out of the district.

This object is at no time within the power or discretion of the inhabitants to control; consequently, there exists no necessity for such meeting, and the trustees are justified in their refusal to call it. Per H. H. Van Dyck, Superintendent, January 5, 1859.

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## SCHOOLS AND SCHOOL-HOUSES.

School may be opened with prayers, provided that it be done before school hours, and that there be no compulsion to enforce attendance.

In an appeal to the Superintendent, certain inhabitants of district No. 15, Barre, complained that the teacher, with the permission of the trustees, "made prayer part of school discipline." The trustees replied that they had permitted the teacher to have prayers, on condition that they should be had previous to school hours, and they alleged that he did not occupy school hours. The Superintendent dismissed the appeal, with the following remarks:

"In this conduct of the trustees, the Superintendent can perceive no cause of complaint. Both parties have rights; the one to bring up their children in the practice of publicly thanking their Creator for his protection, and invoking His blessing; the other, of declining, in behalf of their children, the religious services of any person in whose creed they may not concur, or for other reasons satisfactory to themselves. These rights are reciprocal, and should be protected equally; and neither should interfere with the other. Those who desire that their children should engage in public prayer have no right to compel other children to unite in the exercise, against the wishes of their parents. Nor have those who object to the time, place or manner of praying, or to the person who conducts the exercises, a right to deprive the other class of the opportunity of habituating their children to what they conceive an imperative duty. Neither the common school system, nor any other social system, can be maintained, unless the conscientious views of all are equally respected. The simple rule, so to exercise your own rights as not to infringe on those of others, will preserve equal justice among all, promote harmony, and insure success to our schools. In the present case, the Superintendent thinks the trustees had lawful right to permit the teacher to commence the business of the day by public prayer, with the children of such parents as desired it; and they were also right in directing that such exercises should not take place during school hours, nor form a part of school discipline."

Another branch of this first question is whether the teacher has a right to compel the children to kneel, during prayer, or to dispense with their ordinary business.

The answer already given proceeds upon the principle that prayer is no part of the business of a common school, but that parents may place their children under the superintendence and government of a teacher for that purpose. Of

course his jurisdiction would extend to that only. But others have no right to disturb the performance of what is considered a sacred duty. As the one class is required to abstain from all attempts to compel the children of the other class to engage in an exercise which the latter disapprove, so the latter should abstain from interrupting such exercise, and should instruct their children, accordingly, not to enter the school room, until the usual hour of commencing school, and not to disturb those within by any noise, or other conduct calculated to annoy them. And the teacher should allow the children of all parents who do not desire them to engage in prayer to withdraw from the room, or to absent themselves from it. But if they come into the room before the usual school hours, and choose to remain there during prayer, they must preserve the order and decorum befitting such an occasion. Per Spencer, May 13, 1839.

Trustees have the power, when in their discretion circumstances require it, to establish temporary branch schools in a district, and employ a teacher, without any vote of the district, and a due proportion of the public money should be applied to the payment of such teacher.

It is, perhaps, to be regretted that the law has left so much to the discretion of trustees, in reference to the institution of temporary branch schools. Such schools frequently become necessary, owing to some extraordinary circumstances which for the time being exist in a district. Whenever such necessity does arise, the trustees have an undoubted right to exercise the discretion which the statute has vested in them, by employing a teacher, and opening a temporary school for the accommodation of the children, without any vote of the inhabitants. In this district the majority of the trustees have, on several occasions, determined that such necessity did exist; and the inhabitants, at their annual meetings in 1850 and 1851, have approved that determination by directing the application of a part of the public money to the support of the branch school. The institution of such a school in this district has also met the approval of the town superintendent of Whitestown, as appears from a letter addressed by him to the department, and a decided majority of the taxable inhabitants have expressed themselves satisfied with the proceedings of the majority of the trustees, as appears by a petition accompanying the answer.

Under these circumstances, though it does not clearly appear that all the proceedings of the district in relation to the institution of the branch school have been strictly in accordance with law, I am of opinion that harmony and good order, which are so essential to the prosperity of a school, will be best secured, and the interests of a majority of the inhabitants be best promoted, by sanctioning the proceedings of the trustees in establishing the school in question, and allowing a portion of the public money to be applied toward its support.

The proceedings of the trustees are therefore affirmed and the appeal dismissed. Per H. S. Randall, June 16, 1853.

Trustees will be directed to establish a branch school in a remote part of the district, where there are pupils enough to support a respectable school, and where the school-house is inaccessible some part of the year.

An appeal comes up on the refusal of the trustees to grant the petition of the appellant and six others, inhabitants of the district, to establish a branch school in a neighborhood remote from the school-house.

It is shown that twenty-nine children are virtually deprived of attendance at school, especially during the inclement season, by reason of their remoteness from the school-house—and that a good comfortable room can be obtained in the neighborhood where it is desired to establish the school, at a very moderate cost.

*Held*, that the trustees in the matter of establishing a branch school are not compelled to regard the wishes of the inhabitants, but are authorized to act wholly upon their own sense of justice and right. The statute confers upon them unlimited powers, and, though in their discretion they may properly consult the wishes of the majority, when emphatically expressed, their having done so affords no precedent in itself for the guidance of this department in

reviewing the case and deciding upon its merits. Whenever, in any remote locality of the district, a number of scholars sufficient to make a respectable school are debarred, from the fact of such remoteness, from attending school, the establishment of a branch will be directed. Per H. H. Van Dyck, Superintendent, August 12, 1857.

Action of trustee in establishing a branch school sustained.

On an appeal from the action of the sole trustee in establishing a branch school, it is alleged that such action was not called for by the necessities of the district; that the place selected is unsuitable, uncomfortable and inadequately furnished; and that the evils sought to be overcome by it are not remedied in the conduct and management of the principal school.

It is shown by the trustee that, before the establishment of the branch school, the number of pupils in regular attendance was seventy; that the room was much crowded, and that no convenient seat for classes in recitation could be had.

I am satisfied, from the evidence, that the act of the trustee, at the time, was dictated not only by proper motives, but by circumstances which rendered the proceeding expedient and necessary. A school of seventy, or even sixty, pupils of all grades, even where the room is commodious and ample for their accommodation, cannot be properly classified and thoroughly instructed by one teacher. A remedy is found in the provisions of the statute, which authorize the establishment of a branch school when deemed necessary by the trustee.

The appeal must be, and hereby is, dismissed. Per H. H. Van Dyck, Superintendent, March 25, 1859.

Discretion of a trustee in establishing branch school overruled.

On an appeal from the action of the sole trustee in sustaining two schools in the district, as public schools, and alike entitled to share in the public money appropriated to said district, the following facts appear: That the district is about three miles in extent from north to south, and that the school-house is situated near the center. It further appears that most of the children reside in the northern part of the district, while the population or voters of the district, interested in keeping the school at the center, are in the majority. The residents of the north part of the district, unable to secure a change of site, have maintained, during some portion of the year, for some time past, a school in their vicinity, and have received toward its support a portion of the public money. At the last annual meeting, it was voted that the school be kept in the "brick school-house," near the center of the district; but the trustee also employed a teacher to teach the school in the north part of the district, and from this proceeding the present appeal is brought.

The size of the district, the number of pupils, the condition of the district school-house, are nowhere urged as conditions giving rise to this proceeding. I cannot find, in the conditions presented, a necessity for the establishment of two schools in that district. The trustee himself concedes that there is no necessity for two schools in the district, except that created by feeling in the north, of opposition to the central school. If this feeling is sufficiently strong to cause them to sustain a private school, there is no help for it; but there is no sufficient reason, to my mind, for fostering and cherishing this spirit of opposition, by helping to support the school by making it a public charge.

It is my opinion, therefore, that the trustee has acted without due discretion, and his action in the matter is hereby disapproved. Per H. H. Van Dyck, Superintendent, March 31, 1859.

Trustees will be restrained from establishing a branch school when there is clearly no necessity for one.

The conclusion arrived at from the facts in the case is that the branch school is wholly unnecessary, and its establishment an exercise of arbitrary power and abuse of discretion sufficient to justify the interference of the

department in restraining the trustees. No one will claim that the provisions of the statute authorizing the establishment of branch schools were designed or do confer power to establish two schools in every district of the State.

In all cases of the establishment of branch schools the necessity must clearly appear, or this department will, on an appeal to it, interfere to prevent the consummation of a policy unwarrantable by the provisions of the statute, which provides for the exercise of such power only when necessary to accommodate the children of the district. Per H. H. Van Dyck, Superintendent, August 8, 1860.

Trustees, under certain circumstances, will be sustained in having the school at other place than the school-house.

On an appeal from the action of the trustees in having the school taught at another place than the school-house, it is alleged that the school-house can be made comfortable and convenient for school purposes for the sum of money which the trustees are authorized to raise for that purpose, and also that the place selected by the trustee for the school is unsuited to that purpose, and is inconvenient of access for a large number of pupils.

The trustees deny that the school-house can be made comfortable for the sum authorized to be raised; that the place where the school is at present taught is commodious and comfortable, and accessible to as large a number of the children as is the school-house.

The evidence relative to the actual condition of the school-house is not very conclusive on either side. The common presumption of law that the trustees have acted within the scope of a just and legitimate discretion must therefore prevail. If the inhabitants will not vote a sufficient sum to repair a school-house that has been built for thirty years, they will hardly command the sympathy of the department, even though, in consequence of such parsimony, they are compelled to send two and a half miles to school. Per H. H. Van Dyck, Superintendent, February 3, 1860.

A stove and pipe are necessary appendages to a school-house and proper objects for the levying of a district tax.

At a district school meeting, held in the town of Rodman, on the 20th day of November last, a vote was taken and a resolution passed to levy a tax upon a district to purchase a stove and pipe for the use of the school-house in the district.

The appellants claim that the district has no authority to levy a tax for such a purpose. In the opinion of the Superintendent a stove and pipe are necessary appendages to a school-house and legitimate objects for the levy of a district tax. The proceedings of the meeting in voting the tax aforesaid are hereby affirmed. Per N. S. Benton, December 31, 1847.

A school-house belongs to the district, but trustees have the legal control of it, and must not permit it to be used for purposes which interfere with school. By general consent, they may allow meetings of an unobjectionable character to be held in it.

The school-house belongs to the district, although the means for building it have been raised in part by voluntary contribution. The trustees must have the legal control of it, and not permit any portion to be used for purposes which interfere with the instruction and discipline of the school, nor for any other than school purposes when required for them. Subject to these restrictions, and to such regulations as may be necessary to keep the house in good repair, safe from danger of fire, etc., the trustees, with the general concurrence, may allow the room to be used for meetings unobjectionable to morals and propriety.

As every meeting, to avoid disorder, must have the right to regulate the admission of attendants, it would be going too far to say that no one can be excluded, though residing and a tax payer in the district, under any circumstances. Per E. Peshine Smith, April 13, 1855. (*Letters*, vol. 2, p. 341.)



Where a school-house is shown to be wholly unfit for school purposes, the trustees will be sustained in directing the school to be taught in another place.

From the evidence before me, I am fully convinced that the school-house is altogether unfit for school purposes at any time, and more especially during the winter season. This being the case, I cannot disapprove of the action of the trustees, even if unauthorized, in securing some more suitable place.

It will be understood that the right or power of the trustees to change the location of the school is not a common inherent right, but one arising under the conditions proved by the evidence presented in this case. Only upon a clear showing of the unfitness of the school-house for use would the action of the trustees be sustained. Per H. H. Van Dyck, Superintendent, March 31, 1858.

It is not a sufficient excuse for not opening a school that the school-house is unfit for use; trustees are bound to put the house in the best condition in their power and open a school therein.

Trustees act under a misapprehension of their duty and the rights of the inhabitants when they refuse to open a school upon the ground that the school-house is unfit for use. If the inhabitants, or any portion of them, want a school, it is to be presumed that they are willing to send, and to avail themselves of such facilities as the trustees are competent to furnish. The trustees should provide the best facilities in their power, and when they have done this their responsibilities are at an end. Per H. H. Van Dyck, Superintendent, February 17, 1858.

Trustees have no right to sell the old school-house when a new one has been built, without special authority from the district.

The power to direct a sale of the old house or site is vested only in the inhabitants, lawfully assembled at a district meeting. No such authority was conferred upon the trustees. Per H. H. Van Dyck, Superintendent, February 23, 1858.

A new building erected for a district must be accepted by the trustees before it can be regarded as the legal school-house of a district.

When a district has two school-houses, the trustees may call the annual meeting to assemble at either of them, unless one of them has been designated at a previous annual meeting as the place of assemblage.

The troubles in this district commenced in May, 1864, when the old school-house burned down, and have continued without intermission down to the present time. The record of the actions and proceedings of the contending parties, the one headed by the appellant and the other by the respondent herein, shows that neither party has acted in a temperate or forbearing manner; but, on the contrary, that each party has been ready to take undue advantage of the other, and that the object for which the district was organized has been of minor importance in the eyes of the contending parties. The record is one of continued "sharp practice," the advantage being first with one side, then with the other. This department has, on various occasions, sought to act as mediator between the contending parties, and has suggested various plans of settlement, with a view of restoring harmony to the district, all of which have been rejected, each party insisting upon the full measure of their legal rights and refusing to compromise for any thing less. Thus, Hill, when trustee of the district and before the new school-house was built, refused to call a special meeting for the purpose of changing the site of the school-house, although it was a well known fact that a majority of the voters were in favor of such change, and desired a meeting to be held for that purpose. Again, when a special meeting had been called by Hill for the purpose of voting a tax to build on the old site, the meeting met at precisely the hour for which it was called, all the Hill party being present by private understanding, and, without waiting a moment for the arrival of other voters, organized the meeting, voted a tax of \$1,000 to build on the old site, and adjourned in less than half an hour. Now, it had been the custom in that district, as it is in many

others, not to organize district meetings till the expiration of one hour from the time for which such meeting had been called.

Relying upon this custom, Mr. Collins and his party, composing, as aforesaid, a majority of the legal voters of the district, and all of them opposed to building on the old site, did not arrive at the place of meeting till nearly an hour after the time for which the meeting has been called. They then found, to their great astonishment and indignation, that the meeting had transacted its business and adjourned. In this way a tax was voted, and subsequently collected, against the wishes of a majority of the legal voters of the district. The practice was sharp, but it was perfectly legal, and as the Hill party insisted upon receiving the full benefit of the advantage thus gained, the department had no choice but to sustain them. In October, 1865, Collins was chosen trustee of the district, and, not to be outdone in sharpness, the Collins party passed resolutions directing the calling of special meetings by posting one written notice in the post-office at Fishers' Station, instead of by personal notice, thus practically putting the Hill party beyond the reach of notice of such meetings. The trustee, also, exercising a discretion which the law had reposed in him, refused to accept the new school-house, alleging that it was not built according to contract, but hired other rooms in a rough building near Fishers' Station, and opened and maintained school therein. This was also "sharp practice"; but upon an appeal being brought from Collins' action in refusing to open school in the new house, and in maintaining a school in the building near Fishers', known as the "Shanty," and in applying the public money to the support of said school, the department was obliged to hold that the trustee was only exercising a power which the law had vested in him, and that, until he had accepted the school-house, or had been ordered to do so by some competent authority, he had power to hire other rooms temporarily, and to open and maintain school therein. This decision was rendered May 22, 1866, and the facts in regard to acceptance have not since been changed nor altered. The annual meeting of this district in 1865, at which George S. Collins was elected trustee, was held in the "new school-house" then not completed by the contractor, and was adjourned to be held at the "school-house" one year from that time. Some time about the 1st of October, 1866, Collins caused four notices to be posted in conspicuous places in the district, stating that the annual meeting would be held on the 9th of October, 1866, at six o'clock P. M., railroad time, at the school-house where the school had been kept during the past year. In accordance with this notice, thirty voters of the district met at the time and place specified in said notice, organized and proceeded to elect district officers, and to transact other business. George S. Collins was unanimously chosen trustee for the ensuing year. After completing its business, the meeting adjourned.

Meanwhile, twenty-five of the legal voters of the district met at the "new school-house" on the evening of the 9th of October, 1866, organized by the election of chairman and clerk, and proceeded to elect district officers and to vote district taxes, amounting in the aggregate to about \$2,000. Jerome Hill, the respondent herein, was unanimously designated by this meeting as the trustee of the district for the ensuing year. Hill immediately issued a tax list for the collection of the taxes voted by the meeting which elected him trustee, and placed the same, with his warrant, in the hands of a person whom he had appointed collector in the place of one elected by said meeting, but who had resigned, and this person, Briggs by name, proceeded to enforce collection of said tax list, in certain cases levying on and selling property to satisfy the same. To determine who is the legal trustee of the district, Collins has brought this appeal, complaining of the actions of said Hill and Briggs, and alleging that they are not legal officers of the district. He asks that the proceedings of the meeting held at the "new school-house," as aforesaid, on the 9th of October, 1866, be set aside and declared void as a school meeting.

The main question in this matter is, "Where is the district school-house?" If that building herein designated as the "new school-house" be in reality the

school-house of the district, and the only school-house of the district, then the appellant had no power to direct that the annual meeting should be held in another place. But if such building be not the district school-house, or if the district possesses another building which has been more generally used for school purposes, then the meeting held in the aforesaid "new school-house" was not the legal district meeting.

Now, a building erected for a district school-house in pursuance of contract must be accepted by some competent authority, either openly or by implication, before it in fact becomes the school-house of the district. This point was clearly established in the decision before referred to, rendered May 22, 1866. If the trustee had taken possession of the house, and opened and maintained school therein, that would have amounted to an acceptance. But the well known facts in this case are that the trustee has all along refused to accept this house from the contractor, or to open school therein, alleging that it has not been completed according to contract. Whether his allegation be true or untrue can make no difference with the facts in this case, since his refusal to accept the house is only the exercise of a discretion which the law has reposed in him as trustee. The respondent cannot claim to be ignorant of this holding, since the precise point was established in the decision of May 22, 1866, on an appeal brought by himself against Collins as trustee. If, as is claimed by the respondent, Collins has willfully and wrongfully refused to accept the house, the remedy is plain; the respondent can, either by a suit commenced in the courts, or by an appeal brought to this department, compel the trustee to accept the house. But he cannot set himself up as the judge to decide the question of acceptance. He cannot proceed upon the assumption that the official acts of Mr. Collins are void. Again, admitting, for the sake of argument, that the house which has never been accepted by the trustee is in fact a district school-house, the trustee would still have power, under section 50, title 7, if he deemed it necessary for the due accommodation of the children of the district, to hire rooms temporarily and to open and maintain school therein. The rooms thus temporarily hired would be, for the time being, one of the school-houses of the district, and the trustee would have full power, under section 9 of title 7 of the said school act, to designate such school-house as the place where the annual meeting should be held. Take whichever of these two views we may, it follows, as a logical deduction, that the meeting held in the building which for the last year has been used as the district school-house was the legal annual meeting of the district; and, as but one annual meeting can be held in the same year, it also follows, that the proceedings of the meeting held October 9, 1866, in the building herein designated as the new school-house, and at which Jerome Hill was elected trustee of said district, were void, and of no force or effect whatever as an annual meeting. Another thing is to be borne in mind: the meeting at which Collins was elected trustee was held pursuant, not only to adjournment, but to the notice required by law. Four written notices of the time and place when and where such meeting would be held, signed by the district clerk, were posted in conspicuous places in the district seven days before the time for holding such meeting. This shows that the appellant designed to take no advantage of the respondent or his party, and that the meeting was not intended to be a surprise to any voter. The meeting held in the "new school-house," on the contrary, convened not only without notice, but in opposition to regular official notification. Now, although an annual meeting may be convened without notice and no imputation of bad faith attach to it, an annual meeting convened not only without notice but in opposition to official notice can have but one purpose—to act as a surprise, and to try to effect by trick that which could not be effected upon open trial.

The summary of the whole is this: The meeting at the temporary school-house was held pursuant to official notice, in a building which had previously been recognized by this department as a school-house of the district, and was attended by a majority of all the legal voters of the district. That meeting

unanimously elected George S. Collins trustee of said district for the ensuing year. It is, therefore, hereby decided that the proceedings of said meeting were legal regular and binding, as the proceedings of the annual school meeting of the district; that George S. Collins is the legal and sole trustee of said district for the year ending the second Tuesday of October, 1867; that the persons respectively chosen at said meeting to fill the offices of district clerk, district collector and librarian were legally chosen, and are entitled to perform the duties of said officers; and that the collection of taxes for school purposes voted at said meeting may be legally enforced.

It is also hereby decided that the proceedings of the meeting held in the "new school-house," on the ninth day of October, 1866, at which Jerome Hill was elected trustee, were void, and of no force or effect as an annual school meeting. Per V. M. Rice, February 13, 1867.

Where there is no school-house in the district, and the trustees have hired a house for school purposes, the district is bound to pay the rent whether a school is taught or not. Where a teacher is employed who has no license, the school thus taught becomes a private school.

The district is not bound to pay for fuel used in such school.

On an appeal from certain acts of the trustees, it appears that the district is destitute of a school-house, and that the trustees hired a house in which to have the school taught, and also that they hired, and continued in their employ as teacher of the district school, one who had no legal license or certificate of qualification from the proper officer.

The fact that the teacher engaged had no legal license renders the school, during the period which he taught, a private school.

The trustees have made out a tax list for the rent of the house, and for fuel purchased for use of the school. There appears to me to be a distinction between the two objects for which this tax is levied. The contract to pay rent for the house was valid and binding upon the district in any event, whether the house should be occupied or left vacant.

The expenses of the school, however, are different things; in purchasing fuel for a school in which they had employed an unqualified teacher, they were not acting for the district, but upon their own individual responsibility. They were acting only as self-constituted agents of a voluntary association of individuals engaged in sustaining a private school. I shall not sanction the enforcement of taxes for the support of private schools—that is, of schools taught by a teacher without the legal qualifications. The negligence of teachers to provide themselves in season with proper certificates, and the indifference of trustees to this neglect, are abuses which it is important to check. Per E. W. Keyes, Deputy Superintendent, May 19, 1859.

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## SITES.

A school district cannot delegate the power to select a school-house site. A designation should be specific as to location and size.

The inhabitants of district No. 15, in the town of Smyrna, at their first meeting, resolved that the trustees purchase a site for the school-house, on the corner of Benjamin Hartwell's land, or on Seth Shepard's land where the cooper's shop now stands.

The trustees selected the corner of Benjamin Hartwell's land, paid forty dollars for the site, and contracted for the erection of a house.

They then called a special meeting, for the purpose of ratifying what they had done and raising money to finish the house.

The meeting, by a vote of twenty-six to twelve, refused to ratify their selection, and passed a resolution that the site should be "at a certain beech tree in widow Brown's hollow."

The Supreme Court, in the case of *Benjamin v. Hall*, 17 *Wendell*, 437, decided that the district could not delegate the power to designate a school-house site to the trustees. It cannot make any difference whether a general authority to select is given, or whether the authority is to choose between two points.

The designation made by the special meeting is too indefinite. Verbal explanations, not a part of the record, though given at the meeting, cannot be permitted to locate the spot. The vote was utterly void for uncertainty. Per *Spencer*, August 26, 1839.

The mere act of voting to select a particular piece of land upon which to erect a school-house does not establish the site. It must be followed by an actual leasing or purchase.

The appellants in this case allege that, on the 31st day of May, 1851, at a special meeting regularly called, a resolution was passed authorizing the selection of a site for building a school-house on the land of Mr. Fenner, and the collection of a tax to pay for the same.

The trustees assessed the tax, and about \$45 of it was collected, but they neglected to purchase the site. On the 12th day of March, 1853, at a regularly called meeting, a resolution was passed authorizing the selection of a site on the land of J. H. Dwick, and a tax of \$350 for building a school-house. The trustees then took the money which had been collected for the purchase of the site first selected, and with it purchased the Dwick site. It is claimed by the appellants that it was illegal to change the site after the money had been collected to pay for the same; that no change could be made without the consent of the town superintendent, and that it was illegal to use for the Dwick site the money that had been raised for purchasing the "Fenner" site.

In reply to these allegations, the trustees state that, after the meeting of May 31, 1851, and on the 15th of November of that year, at a special meeting legally held, a resolution was passed rescinding the resolution of the former meeting authorizing the selection of a site upon the land of Mr. Fenner. At a subsequent special meeting, a resolution was passed authorizing the selection of a site upon the land of Mr. Dwick. No action was taken at that meeting in reference to the disposition to be made of the money which had been raised for the purchase of a site; but, at the annual meeting held since this appeal was brought, the trustees were directed to use the money in the purchase of the "Dwick site."

The case referred to by the appellants, in *Barbour's Supreme Court Reports* (vol. 4, p. 25), in support of their first objection, does not sustain the point they raise. The court merely decides that a district cannot legally rescind a resolution imposing a tax, after the tax list has been made out and the tax partly collected. That decision is in accordance with repeated decisions of this department, in which it has been held that a district could not legally rescind a resolution conferring any authority upon the trustees, after they have entered upon the performance of the duty imposed by the resolution. But these decisions do not touch this case. The resolution authorizing the collection of the tax was distinct and separate from that authorizing the selection of the site, and the repeal of the latter in no respect affected the right of the trustees to collect the tax. Besides, it is conceded, and in fact is made the subject of complaint, by the appellants, that the trustees had not taken any steps toward purchasing the site named in the resolution which was rescinded. If they had not, the district clearly possessed the power of rescinding the resolution in the manner they did, unless their action had so established the site that it could not be changed without the consent of the town superintendent. The mere act of voting to select a particular piece of land upon which to erect a school-house does not establish the site. Something more is necessary to accomplish that. The vote must be followed up by an actual leasing or purchase. In this case there is no pretense that a title to the site could not be procured.

But it is alleged that the trustees neglected to procure it, although they might have done so, and the district afterward took from them the authority to make the purchase. This, I think, they had a right to do without the consent of the town superintendent, if they deemed it proper. I can therefore perceive no illegality in the proceedings of the meeting, in selecting a site upon the land of Mr. Dwick.

The appeal is therefore dismissed. Per H. S. Randall, November 29, 1853.

In designating a site for a school-house, the description should be by metes and bounds, and the quantity of land should be stated, that every inhabitant of the district may be able to vote intelligently.

At a special meeting held in district No. 6, Lansing, March 1, 1849, resolutions were passed to change the site of the school-house "to the first corner north of the road, on a piece of land owned by Mary Dickerson;" to raise a tax to purchase the new site, and also a tax of \$300 to build a school-house, etc.

The notices for this meeting having been deficient and improperly given, another special meeting was called, to be held March 15, 1849. At this last meeting, a resolution was passed confirming the proceedings of the meeting of the 1st of March.

The principal point in the case is that the site was not sufficiently designated.

The resolution to move the site "to the first corner north of the road" is too vague and indefinite, and cannot be regarded in law. It does not state whether the trustees are authorized to purchase one-half acre or five acres on the corner, nor is the description of the land given sufficient to give an idea of its location.

In designating a site for a school-house, the description should be by metes and bounds, and the quantity of land should be given, that every inhabitant of the district may be able to vote intelligently. Per Morgan, April 18, 1849.

A district may purchase a site by a majority vote. It is different from changing a site.

This is a case in relation to the proceedings of a school district meeting in the town of Royalton. The district, it seems, has never been the legal owner of a site; it undoubtedly has a right to procure one by a majority of the votes at a district meeting, and without the formalities required in case of a change of site.

I see no objection to the mode adopted by the district in the purchase of the land. A deed should, however, be obtained by the district, previous to the expenditure of any money on the house, so that the title may be secure. Per Dix, November 5, 1838.

The occupancy of a school-house sufficient notice to purchaser of land.

Twenty years previous to the date of appeal, district No. 6, Lincklaen, had taken a lease of a site for the school-house, for as long a period as the same should be occupied for a district school. James S. Graves purchased the land and appurtenances, without any reservation, and forbade the trustees from entering upon it, or from occupying the school-house.

Mr. Graves purchased the land subject to the lease, and the fact that the land was occupied by the district for a school-house and site was sufficient notice to him. The district has a rightful claim to the possession of the land under the lease, and should take legal measures to assert their right. The occupancy is sufficient notice to the purchaser of the title of the district, and he is bound to ascertain it at his peril, notwithstanding the omission to put the lease upon record. Per Spencer, January 23, 1840.

When the trustees have contracted to locate the school-house on any particular place upon the site, in the absence of any instructions from the district, this department will not interfere.

The trustees located a school-house a few feet less than four rods from the south line of their lot, which is bounded on the highway. The appellants and

a majority of the district desired to leave full four rods in front. The trustees, however, in the absence of any explicit instructions or direction from the district, agreed upon the present location, and entered into a contract with a builder who had commenced his work prior to any instructions from the district. The trustees having gone on, for aught that appears to the contrary, in good faith in the location of the house prior to any expression of the wishes of the district, and having entered into contracts and incurred liabilities in the prosecution of the work, it is deemed unwise and inexpedient to subject the district to the expense which must be incurred by a change in the location.

The appeal is dismissed. Per A. G. Johnson, Deputy Superintendent, August 30, 1849.

It is not necessary that a majority of all the taxable inhabitants should be obtained, in addition to the consent of the town superintendent (supervisor) in order to change the site, but only a majority of those present and voting at a meeting duly notified.

This is an appeal from the proceedings of a special meeting held in said district on the 18th day of October, 1851.

At this meeting, it appears that resolutions were passed changing the site of the school-house, and authorizing the collection of \$10 by tax, for purchasing a new site, and \$175 for building a new school-house thereon. The appellant alleges that these resolutions were not passed in the manner required by law, and that the town superintendent never legally gave his consent to the proposed change of site.

The appeal papers concede that the resolution to change the site was passed by a vote of a majority of all the taxable inhabitants of the district who were present and voted at the meeting. Therefore, if the consent of the town superintendent was given in accordance with law, the resolution to change the site was passed by the required legal majority of the inhabitants. For it is not necessary that, in addition to the consent of the town superintendent, a majority of all the taxable inhabitants residing in the district should be obtained, in order to change the site, but only a majority of those present and voting at a meeting duly notified.

It appears by the answer that the town superintendent did give his consent in writing, to the proposed change, on condition that the requisite majority of the inhabitants of the district should be in favor of the change. This consent became absolute the moment the condition was complied with. The requisite consent was obtained upon the passage of the resolutions.

Appeal dismissed. Per H. S. Randall, March 25, 1852.

A majority of voters at a school district meeting may empower the trustees to purchase additional territory adjoining the school-house site, for the purpose of enlarging their grounds for school purposes. It is not a case of removal of site.

The only question involved in this appeal is whether the purchase of an additional quantity of land adjoining that on which the former school-house of the district had been erected, and which was burned down, rendering it necessary for the district to build a new one, and the rebuilding of the district school-house wholly or in part upon the new ground thus purchased, is such an act as requires the assent of two-thirds of the voters present at a district meeting called specially for the purpose under the provisions of section 1. No. 85 (section 20, title 7), of the Laws relating to common schools. I do not doubt the legal right of a majority of the voters, in any district meeting duly convened, to lay a tax upon their district to purchase ground additional to and adjoining a site already owned by the district, if such ground be suitable for the purpose of the existing site, and the school—such as play-ground for the children, wood-house or other appendages. Nor could the certificate of the town superintendent be necessary to render such an act legal any more than for building a wood-house, or repairing the school-house. The district, as I understand the case, owned no more ground than was covered by the buildings. Now, what were the acts which the law intended to prohibit the mere

majority from doing after a site had been purchased and a school-house built or purchased for the district while the same remained unaltered?

Certainly not to prevent the purchase of more ground immediately adjoining, if necessary, nor the erection of additional buildings thereon, if the exigencies of the district required it for the accommodation of the school, or even the erection of a new house should it be necessary.

These are acts which, in my judgment, it is perfectly competent for the majority of the inhabitants of the district to perform, when assembled in a school district meeting. I cannot hold this to be such a change of site as comes within the provisions of the section above mentioned. Per N. S. Benton, July 10, 1846.

In levying a tax for the purchase of a school-house site, the district is not limited as to the amount to be raised.

The certificate of the town superintendent (supervisor) is not necessary, and the district may, by a majority vote, raise such an amount as shall be necessary for the purpose.

At a special meeting of the inhabitants of district No. 5, Troy, held July 20, 1848, a site for a school-house was designated, and a tax of \$475 was voted to pay for the same. The site thus designated was for the second school-house in the district.

The appellant desires that the proceedings be set aside for the following reasons:

1. Because the commissioners did not certify that a larger sum than \$400 was necessary to purchase the site;

2. On the ground of expediency.

By subdivision 8, section 62, School Laws, provision is made for designating sites for two or more school-houses in a district.

With the consent of the town superintendent, or the commissioners, as in this case, the inhabitants of a district, when legally assembled, may, by a majority of votes of the legal voters present, designate a site for the second school-house in their district, and may lay a tax upon the taxable property of the district to purchase such site. The limitation to \$400 (\$1,000) does not apply to such cases. The section which requires the consent of the town superintendent to raise a larger sum only applies "to building, hiring or purchasing a school-house." (See section 70 (section 18, title 7), School Laws.)

The proceedings of the meeting of July 20 were legal.

As to the question of expediency, this department does not feel at liberty to interfere without proof of palpable wrong or abuse of power, which does not appear in this case.

This decision is not intended to favor the abandonment of the old site.

The appeal is dismissed. Per Morgan, September 26, 1848.

When a district has been altered, the site of the school-house may be changed by a vote of the majority of those present at the meeting.

Due notice of a meeting will be presumed, unless the contrary be shown.

A special meeting of joint district No. 9, of Manheim, Herkimer county, and Oppenheim, Fulton county, was held December 19, 1854, and a vote was passed to change the site of the school-house. The meeting then adjourned to receive propositions. On the twenty-third day of June, 1855, a new site was designated, and at a subsequent adjourned meeting an adjournment to the second Tuesday of October, 1856, was carried.

The trustees, however, called a special meeting for December 4, 1855, at which a tax of \$450 was raised for purchasing the new site, \$1,000 for building a new school-house, and \$200 for wood-house and privies. The certificate of the town superintendent, that \$1,200 was necessary for the house and out-houses, had been given.

The appellant raised the following points:

1. That the school-house site was illegally changed, no consent of the town superintendent having been obtained.



It might suffice to say that no such point was made in the appeal; but it is conclusively met by the reply of the trustees, which shows that the district has undergone repeated alterations since the erection of the school-house. No consent of the superintendent was necessary to authorize the fixing of a new site by a majority of the votes of those present and voting.

2. The appellant objects that it does not appear by the return of the district clerk, or otherwise, that the legal voters of the district, or any of them, were duly notified of such meeting. The burden of proof on this point rests on the appellant. The presumption always is that public officers have done their duty. This presumption is supported in this case by the express statement that one voter received no notice, for it implies that no other failure to give notice could be alleged. Those who attended certainly had notice, and the omission in a solitary instance is not averred to have been willful or fraudulent.

The proceedings were legal and regular. Per V. M. Rice, February 6, 1856.

A two-story school-house may be built upon land leased, with the agreement that the rent, or consideration of the grant, shall be the use by the lessor of the upper story out of school hours.

The consistory of the Reformed Dutch Church, in the town of Greenbush, granted to district No. 2, of said town, a lot of land for a school-house site, so long as the same should be used for that purpose, reserving an annual rent. Subsequent to the execution of the lease, an agreement was entered into between the trustees and the consistory, that the school-house should be built with two stories, and that when the upper story was not wanted for school purposes the consistory might use it, and such use, while permitted, should be in full payment for the rent. With full knowledge of this agreement, the district, thirty-three to seven, voted to raise a tax of \$400, to procure the site and erect a school-house. *Held*, that the use of the upper story by the consistory was a fair equivalent for the rent, and that the agreement was not improper or illegal. Per Spencer, April 23, 1839.

A school district has no authority by law, and this department will not permit the inhabitants, to take a perpetual lease for the site of a school-house. The district should have the fee simple before building.

The trustees of district No. 5, in the city of Troy, called a special meeting of the district to be held on the 29th of February, 1848. This meeting was organized and adjourned to the 27th of March following.

At the adjourned meeting, a resolution, which had been introduced at the previous meeting and laid on the table for future action, was called up. The resolution was amended, and, as amended, adopted unanimously. The resolution adopted read as follows:

"*Resolved*, That the trustees of school district No. 5, of the city of Troy, be directed, by and with the consent of the school commissioners of the city of Troy, to lease, from Messrs. Marshall, Belding & Christie, lots Nos. 14, 15 and 16, on the north side of Christie street, in the fifth ward of the city of Troy, at a yearly rent not exceeding the sum of thirty-four dollars per annum, with the privilege of buying off said rent at seven per cent within ten years from date."

The contemplated lease was for the site of a school-house.

The only question necessary to be considered is this: Can a school district lease or purchase a site for a school-house in the manner contemplated in the resolution before mentioned?

By the fourth and fifth clauses of section 62, chapter 480, Laws of 1847, the inhabitants of a district have power to designate a site for a district school-house, and to lay such tax on the taxable property of the district as the meeting shall deem sufficient to purchase or lease a suitable site for a school-house, and to build, hire or purchase such school-house, and to keep in repair and furnish the same with the necessary fuel and appendages, and section 82 authorizes the trustees to carry such vote into effect.

The word "lease" used here must be interpreted to mean a lease for a limited term, one, two or three years, of a lot of land and building to be used by the district till such time as a suitable site can be procured in fee, or the conveyance of a lot of land to the district, to be the property of the district so long as it shall be occupied for a school-house site.

Under the new Constitution, no agricultural land can be leased for a longer period than twelve years; and, although individuals in cities may still lease building lots for longer terms, or in perpetuity, it is certainly desirable that land to be used as the site of a school-house should be free from any and every incumbrance.

The statute confers no authority upon a school district to purchase land and give a mortgage or any other security for the consideration money. In the section authorizing the inhabitants to lease, authority is given to raise a tax for that purpose. It cannot be, therefore, that the authority to lease gives the inhabitants the privilege of voting that such a contract shall be entered into as will entail a perpetual debt upon the district and put the people to the necessity of raising a tax to pay the rent every year throughout all coming time. It has heretofore been held that the district could not purchase a site and give a mortgage for the purchase-money, one-half to be paid in five years and the balance in ten years. This department has, also, repeatedly held that districts could not be permitted to buy a site and erect a school-house upon land incumbered by mortgage.

No good reason can be given against permitting the district to give a mortgage for the purchase-money of a site which will not bear with equal force against permitting them to enter into a contract by which the site of the school-house may be subjected to a perpetual incumbrance. If a mortgage is given, the interest must be paid annually, and the principal within some specified time. If a perpetual lease is given, the interest of the stipulated value of the land must be paid annually, but the principal cannot be paid at all except at the option of the lessor. The fact that the principal cannot be demanded is not a sufficient reply to the objection, for the real difficulty is that the lien and incumbrance can only be removed with the consent of persons claiming the lien.

What is this contract as contemplated in the resolution? It is just this: The lots are assumed to be worth about \$487. The present owners say that the district may have an unconditional title in fee conveyed to them at any time in ten years, on the payment of that sum and the interest annually at seven per cent. But if the \$487 is not paid within ten years, then the owners may demand \$500 or \$1,000, or just such sum as they may think proper.

A mortgage may be foreclosed, if interest and principal, or either, are not punctually paid, and the premises sold, but in that case the proceeds, after paying the debt and costs, are refunded to the mortgagor.

If rent is not punctually paid, the landlord may re-enter and take possession of the premises leased, together with all the improvements, and may have judgment for costs.

If, therefore, any incumbrance upon a school-house site is allowable, a mortgage would be preferable to a perpetual lease.

The appeal is therefore sustained, and the resolution adopted by the meeting of the twenty-seventh March aforesaid is set aside and declared null and void. If the district need a new school-house, the site for it must be purchased, and a tax levied to pay for it. Per Morgan, July 6, 1848.

Site of a school-house in union free school district established and changed by vote of inhabitants in same manner as in districts subject to general school law.

The site of a school-house in a union free school district is established and changed by the vote of the inhabitants in the same manner as in those districts subject to the general school law. The board of education, like the ordinary trustees, are in this respect mere executors of the popular will. If it is not absolutely necessary, it is at least the only safe mode, to procure the ratification

by a district meeting, of a selection made by the board under a vote requesting them to purchase. Per E. Peshine Smith, Deputy Superintendent, May 8, 1855. (*Letters, vol. 2, p. 395.*)

Districts that have been altered in their boundaries since the establishment of a site and building of a house are not restricted in their power to change such site at any legal district meeting.

It is not difficult to ascertain the meaning of the statute in regard to the change of site of school-houses. It imposes a limitation upon the general power of school districts in regard to changing the site of the school-house. The general limitation is expressed in the following words: "As long as the district shall remain unaltered." Districts not embraced in this general limitation are not referred to in the subsequent limitation. In short, the power of the inhabitants of districts that have been altered is left wholly unimpaired, as this section of the statute says nothing concerning them, and hence applies to them no limitations whatever. Per V. M. Rice, Superintendent, February 20, 1864.

Where the consent of the supervisor to a change of site is obtained by misrepresentation, the proceedings will be set aside.

A special meeting voted to change the site of the school-house to the farm of Jesse Carpenter, the consent of the supervisor of the town having been first obtained.

The appellant objects to the proposed change, the said new site being in a remote corner of the district, distant four miles from the residences of those living on the opposite side of the district. He claims that the proceedings of said meeting in the matter of changing the site as aforesaid were illegal and void, and asks to have them so declared and set aside for the following reasons:

1. Because no legal notice of said special meeting was served upon the inhabitants of the district;

2. Because the consent of the supervisor to the aforesaid change of site was obtained through fraud and misrepresentation;

3. Because the minutes of the said meeting were not properly kept, and do not show on their face the precise location of the proposed new site. Either one of the two first objections urged by the appellant, will be, if proven, sufficient cause for pronouncing the proceedings of said meeting void, and of no effect whatever.

Passing over the objection first taken, it is established, beyond doubt, by the affidavit of William E. Teal, supervisor of said town, that he was induced to give his consent to the proposed change of site—the exact location of said new site not having been agreed upon when his said consent was given—upon the express understanding that the new site should be centrally and conveniently located, so as to accommodate all of the inhabitants of the district. The committee who applied to the supervisor for his consent to said change of site mentioned two central localities where they hoped to be able to obtain the said site, and by these representations, and by disclaiming any intention of locating the site in a remote corner of the district, induced said supervisor to give his consent as aforesaid. The said supervisor swears that under no circumstances would he have given his consent to the location of the new site in so remote a corner of the district as that selected by said special meeting, and further, that, as soon as he was informed of the action of the meeting, he immediately addressed a note to the committee which had waited upon him, revoking the consent which he had given. Consent thus obtained is no consent at all. Fraudulent representations vitiate any contract or agreement, and in this case it is clear that it was only through misrepresentation that the consent of the supervisor to said change of site was obtained.

The excuse offered by the committee which located the aforesaid new site, that no central location could be provided, is disproved by the affidavits of Ferris and others. It should also be remembered, that the district could pro-

quire a central site even without the consent of the owner of the land, by complying with the provisions of chapter 800 of the Laws of 1866.

For the reasons above set forth the appeal is sustained, the consent of the supervisor to the aforesaid change of site is declared void, as having been obtained through misrepresentation; and the subsequent proceedings of the special meeting had in said district as aforesaid, so far as they relate to a change of site of the school-house of said district, are, also, hereby pronounced illegal, void and of no force and effect whatever; such proceedings having been founded upon the fraudulently obtained consent of the supervisor, without which consent they would have been void in themselves. Per V. M. Rice, July 13, 1866.

The department will not interfere with the action of a district in purchasing a site, except where the title to said site is clearly and conclusively shown to be defective.

In considering a question of title, it must be borne in mind that it is not in the province of this department to pass upon that question so as to affect at all the interests of those claiming ownership in the soil. This department can only determine, from the evidence presented, whether the presumption of invalidity is so strong as to justify its interference in arresting the action of the district. If the title is so clearly defective that its acceptance will involve protracted and hopeless litigation, peril the peace and prosperity of the district, and thus arrest or retard educational progress, it becomes manifestly the duty of this department to interfere, even in opposition to the will of a majority of those interested.

In the present case, a majority of the district, fully informed upon the merits of the case, individually interested in being right, and personally liable to expense if wrong, unhesitatingly declare themselves satisfied of the validity of title. It would require a clear case of invalidity of title to justify the interposition of this department under circumstances like these, and, as such invalidity is not shown, the department will not interfere. Per H. H. Van Dyck, Superintendent, August 14, 1857.

Where the district does not authorize a change of site, this department will not interfere to compel such change, even though justice requires it.

It appears that the present site of the school-house is quite far from the center of the district, and in the north part of the same. The inhabitants residing in the south part of the district are naturally and justly desirous of changing the site, and of establishing it near the center of the district. At a meeting of the district called for the purpose of considering this question, a resolution was offered that the site remain where it was. This resolution was lost by a tie vote, and before any further action was had the meeting adjourned. From this neglect of the inhabitants to take any affirmative action upon the question of removal, this appeal is brought.

*Held*, that, while the desire of those who are striving to change the site appears to be just and reasonable, the circumstances of the case do not justify the interference of this department. It is a high prerogative to come in and overrule the action of a majority of the district—formally and legally taken—and one which the department will not exercise except for the strongest reasons—the most urgent necessity.

Here the site is already established, and has for a long time been occupied by the district. The district is the only competent authority for changing the site, and I do not regard the authority of this department, even, as sufficient to take up the original question, and direct that a change of site shall be made. Per E. W. Keyes, Deputy Superintendent, September 9, 1858.

In locating two sites in a district, the whole district must act upon the question of each site, not simply the sections to be respectively favored.

Taxes have been voted for the building of two school-houses in the district, for the accommodation of the inhabitants in the remote sections, no one central site being accessible to all the inhabitants.

In establishing these two sites, the law vests the authority in the voters of the district—does not confine it to the voters of each section or locality, for whose benefit the site is to be established, and the whole district must act on the question of the location of each site. Per H. H. Van Dyck, Superintendent, May 8, 1860.

Where trustees purchase a site designated by the district, an appeal from their action will not lie; it should be brought from the proceedings of the meeting in designating that site.

This is an appeal from the action of the trustees in purchasing a school-house site, and contracting for the building of a school-house thereon.

The acts complained of were under the authority and direction of votes of the inhabitants, duly convened in district meeting. The appeal should have been brought from these proceedings before thirty days had expired, and before the trustees, in obedience to the votes of these meetings, had contracted for the site and for the building of the house. The district is bound by these contracts, and the matter has now passed beyond the reach of equitable interposition by this department, and must, therefore, be permitted to take its natural course. Per H. H. Van Dyck, Superintendent, July 9, 1860.

Consent of supervisor to a change of site must be as prescribed by statute.

The statute that provides for change of school-house site, where the same has once been duly established, carefully guards against capricious action on the part of the inhabitants of a district, occasioned by slight changes in the numerical strength of parties very evenly divided. It is provided by the statute that the site shall not be changed without the written consent of the supervisor, "stating that, in his opinion, such removal is necessary." The object of this provision is to vest this discretionary power in one presumed to be disinterested, and who will act solely with reference to his opinion of the educational interests to be promoted.

It is manifest, therefore, that neither the letter nor the spirit of the statute is complied with when the supervisor, instead of expressing an opinion founded on his own convictions, certifies that he thinks the removal "necessary, if the inhabitants so determine." His opinion must be founded on the condition of things existing in the district, not upon what may be the vote on the question, and a consent founded upon a vote of the inhabitants amounts to no consent at all. Per H. H. Van Dyck, Superintendent, December 4, 1860.

Where two sites have been designated and purchased after a protracted controversy before this department, the question of the consent of the commissioner will not be considered upon a subsequent collateral issue.

On an appeal from the proceedings of a special meeting, the objection is to a certain resolution, passed at said meeting, whereby certain sums of money were voted to be expended upon two school-houses or sites in said district. The objection is that the district has no such site, because due and proper consent was never obtained to establish such site. But that question had already been settled in a former appeal to this department.

The department will not at this late day enter upon the consideration of that question. The district, and, if I mistake not, these appellants themselves, have, by their previous action, recognized the fact of such site; it has been, as I understand, purchased; a valid title obtained, and all the ostensible evidences of ownership on the part of the district have been at one time or another produced. I do not, therefore, now, choose to inquire whether the formal consent of the commissioner to the purchase of that site was ever given. That would have been a proper question to present in order to prevent the purchase, but should not be raised, and will not now be considered, since the purchase and other acts incident thereto have been substantially acquiesced in. Per E. W. Keyes, Deputy Superintendent, March 28, 1861.

## Division fences.

In regard to division fences, a school district is subject to the same liabilities as any other owner of real estate. If the district chooses to let the site lie open to the highway, you cannot compel them to build or maintain any portion of a division fence. If, however, you build such fence, and the district afterward incloses the school lot, you can compel the inhabitants to refund half the expense of building the line fence. Per V. M. Rice, Superintendent of Public Instruction, October 26, 1866. (*Letters*, vol. 5, p. 663.)

Money must not be paid for site until clear title is obtained.

Trustees ought not to pay money for a site until they have a valid title from all the owners, and a regular release under seal of any existing mortgage or other incumbrance, and a satisfaction of any incumbrances which, though paid in fact as may be supposed, are not discharged of record. Per E. Peshine Smith, Deputy Superintendent, March 24, 1855. (*Letters*, vol. 2, p. 281.)

## TAXES AND TAXATION.

No notice of an assessment is required except where an original valuation is made; nor is a notice that a tax list has been placed in the hands of a collector for collection necessary.

The appellants in this case seek to obtain an order setting aside a tax list on the following grounds:

1. That the trustees did not give any notice to the tax payers to meet and review their assessment roll;

2. That they did not give any notice that said tax list was completed and that the trustees would meet on a certain day to receive payment of taxes without any per centage;

3. That the collector did not advertise according to law that he would receive voluntary payment of taxes.

These objections are untenable. The present school law does not require any notice of an assessment to be given by the trustees of a district except when an original valuation is to be made, which was not done in this case. Nor does it require the collector to give any notice whatever that a tax list has been placed in his hands for collection. All of the former provisions of law requiring such notices to be given have been repealed.

The appeal is therefore dismissed. Per H. S. Randall, May 26, 1853.

When different parcels of property, of different quality and value, lying in two districts, are so coupled together in the town assessment roll, in one aggregate valuation, that their separate value is not apparent, and cannot be fixed, without an exercise of judgment on the part of the trustees, a new valuation should be made, and notice given. Per Young, Nov. 23, 1842.

Contiguous territory lying partly in two or more districts, occupied and cultivated as one farm, is taxable in the district in which the occupant resides.

The facts in this case as submitted are as follows: Whitman was the owner and occupant of a farm in district No. 12, but recently purchased another lot of land contiguous to his farm and lying in district No. 2, and removed his residence to district No. 2.

Whitman, residing in No. 2, is taxable in No. 2, for all the land he occupies and cultivates which is composed of contiguous territory.

The farm lying in No. 12, on which he formerly resided, lying contiguous to the farm upon which he now resides in No. 2, and both farms being occupied by him, is taxable in No. 2 and not in No. 12.

But the tenant of Whitman is a resident of No. 12, and must be taxed there, for the house and garden occupied by him. Per Morgan, June 7, 1848.

Where a tax payer voluntarily moves from one district to another he is liable to a tax for building a school-house in the latter district, even if within four years he has paid a tax for that purpose in the district from which he removes.

Benjamin Mix, the petitioner, owns a farm partly situated in district No. 16, and partly in No. 10, Gouverneur. St. Lawrence county. Until last August he lived within the bounds of No. 16, but at that time he moved into district No. 10. While a resident of No. 16, he contributed his share of the expense of building a school-house in that district. This was about eight years since.

The inhabitants of No. 10 have recently raised a tax to build a new school-house, and have included the farm of Mr. Mix in their tax list. He wishes to be released from the payment of the tax.

This petition must be denied, because the law exempts only those who have been set off from another district without their consent within four years from the payment of a tax for building a school-house.

Mr. Mix voluntarily moved from No. 16 to No. 10, and moreover upward of four years have elapsed since he was taxed for building a school-house, so that he cannot claim exemption on either ground.

The petition is dismissed. Per A. G. Johnson, Deputy Superintendent, August 7, 1848.

A tax may be levied to finish the erection of a school-house commenced by subscription, provided the district own the site; if not, the subscribers must first relinquish their title to the district. Per Dix, May 11, 1838.

When a school-house is so decayed as to be no longer adapted to its purposes, the district may raise money by tax to build a new one, by a majority vote, and without a special notice of the intent to propose such a tax, at an annual meeting. Per Spencer, January 15, 1840.

When the trustees make any change in the valuation of property differing from the valuation, as appears by the assessment roll, they should give twenty days' notice of the changes they have made to the inhabitants of the district affected thereby.

The appellant in this case represents that, on or about the 2d of March last, a tax was voted for the support of schools at a special meeting called and held in district No. 1, under the provisions of the new school law; and that the trustees, in apportioning the tax thus voted, altered the valuations of the taxable property of the district from the assessment roll of the town in several instances specified by the appellant, and, among others, in his own case, without giving the notices prescribed by law, in consequence of which a larger sum has been assessed to him and others than was equitable and just.

The trustees, in their answer, do not deny the charge that a departure from the last assessment roll of the town was made by them in ascertaining the valuation of the taxable property referred to, without giving the notice prescribed by law, but claim that the valuations put by them on such property were substantially correct and in accordance with the standard adopted by the assessor.

The Superintendent is of opinion that the defense thus set up by the trustees is invalid and untenable. The law specifically requires that, in all cases where the valuations of taxable property cannot be ascertained from the last assessment roll of the town, the trustees shall ascertain the same from the best means of information within their power, giving notice to all persons interested, and proceeding in the same way that town assessors are required to proceed in the first instance. Unless, therefore, this requisition is strictly complied with, the assessment thus made by the trustees is illegal and invalid, whatever may be the standard of valuation adopted by them, or whether such valuations are just and equitable or not.

The persons interested in such alteration were entitled to notice in the mode prescribed by law, and to an opportunity of appearing before the trustees and claiming a reduction of their assessments as so ascertained; and they may legally avail themselves of the omission to give such notice, either to resist the collection of the tax thus illegally imposed, or to bring an appeal to this department for such redress as may be in its power to afford. The tax list, being void in part, is void throughout.

It is accordingly hereby ordered that the tax list made out by the trustees of district No. 1, in the town of Fowler, in pursuance of the vote of the special meeting held in said district, be, and the same is hereby, set aside, and the trustees are directed and required, within thirty days from the date hereof, to make out a new tax list in accordance with law, and to deliver the same, with their warrant annexed, to the collector of the district for collection, refunding, if required, any amount heretofore illegally collected. Per Morgan, June 4, 1850.

The assessment roll of a town, as revised by the assessors and delivered to the supervisors, is complete so far as to bind the trustees in making out a tax list.

The trustees of joint district No. 1, Gates and Chili, Monroe county, in making a tax list on the 15th day of October, 1855, adopted the valuations of the town assessment rolls for 1854. The rolls for 1855 had not then been revised by the supervisors, and, as those of the two towns differed very materially in their valuations of real estate, the trustees considered it unjust to follow them until such revision. In this the trustees erred, and their tax list is consequently erroneous. It has been repeatedly decided by this department, and also by the supreme court, that when the assessment roll has been revised by the assessors and delivered to the supervisors, it becomes so far complete as to bind the trustees.

If the trustees of a joint district regard the valuations of the two town assessment rolls as not substantially just, as compared with each other, so far as such district is concerned, they have the right to apply to the supervisors of the towns, parts of which are embraced within their school district, to determine the relative proportion of taxes that ought to be assessed upon the real property of the parts of such district so lying in different towns. (*Sec. 69, title 7, chap. 555, Laws of 1864.*)

They can resort to this remedy as well after as before the board of supervisors has revised and equalized the town assessment rolls.

The appeal is sustained, and the trustees authorized to amend their tax list in accordance with law. Per E. P. Smith, June 4, 1856.

It is the duty of the trustees in laying a tax to assess the same against every person within the district who owns or is in possession of taxable property at the time of making out such tax list.

On the third day of February, Mr. Hoyt sold all his real estate in said district to William Moreau, and executed and delivered a deed to him. Mr. Hoyt remains in possession, and by the contract will remain in possession till April 1, 1848. February 15, 1848, the trustees of the district proceeded to make out a tax list upon a tax voted January 15, 1848, to build a school-house. They, with a full knowledge of the above sale and conveyance, assessed Mr. Hoyt with the farm and real estate so sold.

Mr. Hoyt claims that the land should have been assessed to Mr. Moreau.

The trustees were right. By section 85, chapter 480, Laws of 1847, the trustees are required to apportion a tax upon "all the taxable inhabitants holding property in the district, according to the valuations of the taxable property which shall be owned or possessed by them at the time of making out such list." Mr. Hoyt, at the time of making out the list, had not given up possession and must be considered the possessor.

It is to be presumed that the purchase-money is not to be paid until possession is delivered, in which case the trustees could not assess the price of the



farm to Mr. Hoyt as personal property. The appeal is dismissed. Per Morgan, March 18, 1848.

**Taxation of a person having the naked possession of land without color of title. A previous case commented on and explained.**

On the first day of April last, Mr. Davis executed and delivered a deed of his farm to Mr. Frost, the owner of the adjoining land, receiving from him a payment of \$900 in cash, and the promissory notes of third persons, and a mortgage for the residue of the purchase-money. On the twelfth day of April, the trustees made out a tax list, and, as Mr. Davis still continued in possession of the farm he had sold, assessed him for the value thereof. Upon his objecting, and stating to the trustees that he was in possession only at sufferance, while waiting for the opening of lake navigation to transport his family and effects to Wisconsin, the trustees proposed to assess him for the price of the farm as personal property. To this he replied that he had already made a contract for the purchase of a farm in Wisconsin, and bound himself to pay a larger sum than that for which he had sold his farm, and offered to make an affidavit that his debts exceeded the value of his personal property. The trustees being satisfied of the truth of his statement, but supposing themselves bound to assess him for the farm by a decision of the Superintendent, united with Mr. Davis in submitting the facts for a decision.

The trustees have been misled by overlooking the distinction between the present case and that to which they refer. In the former case, Mr. Hoyt reserved the right of possession for a definite period, and was the actual owner, with all the responsibilities of ownership, until that period arrived. In this case, Mr. Davis, though actually in possession, is without any claim of title to possession for an hour. Mr. Frost is the admitted owner, though he has not exercised his extreme right by inhospitably turning his neighbor out of doors. As such owner he is liable to be taxed for the real estate purchased.

The facts conceded in respect to the indebtedness of Mr. Davis are a conclusive answer to any supposed obligation on the part of the trustees to assess him for personal estate, though the fact that he is about to remove, and can receive no benefit from the tax, has no legal importance in the question. Per A. G. Johnson, Deputy Superintendent, May, 1849.

**Land worked under a contract, by which the lessee is to share in the produce thereof, is subject to taxation in the district where it is situated.**

The appellant is the owner of lot No. 34, included in the boundaries of district No. 9, Wirt, Allegany county, and also of lot No. 26, which adjoins it, but is included within the boundaries of district No. 1, and is in the occupation of an inhabitant of district No. 1, holding under a lease by which he renders a share of the produce to the appellant. The statute expressly provides that any person working land under a contract for a share of the produce of such land shall be deemed the possessor, so far as to render him liable to taxation therefor in the district where such land is situate. The trustees aver that the existence of such a lease never came to their knowledge until after the making out of the tax list. This is doubtless true; but they were bound to know the limits of their own district, and were bound at their peril not to impose a tax upon any one, in respect to land outside of their limits, unless it was in his actual possession, constituting a part of real property "partly within such district and partly in an adjoining district."

It is an anomaly that land lying in one district should, under any circumstances, be withdrawn from its liability to support the public burdens of such district, and made to contribute to those of another in which the owner may reside. The law is to be so construed as to restrict such cases within the narrowest possible limits.

The appeal is therefore sustained. The trustees must correct their tax list, by excluding therefrom the valuation of lot No. 26, and by assessing so much of the tax as is imposed upon the appellant by reason of his ownership of such

lot on the taxable inhabitants of the district, in proportion to their respective valuations. Per E. P. Smith, Deputy Superintendent, May 20, 1856.

Presumptively, the trustees of a school district have no right to go beyond the boundaries of their district to tax; and when they do, it lies upon them to establish the power to tax, and not upon the party taxed to disprove it.

The trustees, in the answer, rely upon the fact that the appellant did not show that he claimed a reduction of his tax, or that he notified them of the alienation of the property, by the taxation of which he is aggrieved. They do not deny any of the facts set up in the appeal.

The appellant avers that, about two months previous to the making out of the tax list, he had sold the southern part of lot No. 35 (120 acres), in parcels, to two persons, who took possession and resided upon it. It is not within the limits of district No. 7, but adjoins land owned by the appellant in that district. This is the only circumstance in support of the authority of the respondents to tax it. The statute, however, requires that it should be owned or possessed by a taxable inhabitant of their district at the time of making out such list.

The power being in derogation of common right, which would exempt all land from being taxed elsewhere than in the district where it lies, must be construed rigidly. The possession of the purchasers is of itself notice of their rights, and should put the trustees upon inquiry.

While the last assessment roll is to guide them in the valuation of any property which they may be authorized to tax, unless the right to a reduction of such a valuation be established, it cannot, in the nature of things, establish the liability of such property to taxation. Presumptively, the trustees have no right to go beyond their district limits; when they do so, it lies upon them to establish the power, and not upon the party taxed to disprove it or to take notice that it is about to be exercised unless he remonstrates. The appeal must be sustained. Per V. M. Rice, February 28, 1855.

Trustees are to assess the road bed of a turnpike precisely as if that portion of it lying in their district belongs to an individual not owning the remainder; unless the net annual income of the company over and above all expenses for repairs, etc., is less than five per cent upon the original cost, in which case the road is exempt from taxation.

The turnpike company were not assessed upon the town roll, and the trustees admit that they gave no notice of the completion of their roll, and consequently neither the appellant nor any other person had the opportunity of calling for the correction of the valuation of the company's property. The appellants swear positively that the property of the company assessed at \$600 is worth \$2,000, and the respondents in their answer show that they assessed it simply as they would agricultural property at \$30 per acre, and apparently without allowing any thing for the labor and materials employed in making the land covered by the road bed productive and valuable as a turnpike. It is of course impossible for the Superintendent to judge to what degree this valuation may be erroneous. It is sufficient objection, however, that the appellant has not had the opportunity, which the statute designed to secure, of producing such evidence to the trustees as he deemed proper to induce them to increase this valuation and thereby lighten the burden of his own taxation. The judgment of the supreme court in the case of "*The Albany and Schenectady Railroad Company v. Osborn*" (12 *Barbour's Supreme Court Reports*, 223) shows that the appellant is mistaken in supposing that the value of the stock is to control the trustees in judging of the value of that portion of the plank-road in their district. They are to assess the road bed precisely as if that portion of it in the district belonged to an individual owner not owning the remainder, unless the net annual income of the company over and above all expenses and repairs and collection of tolls is less than five per cent upon the original cost of the road, in which case the road is exempt from taxation. (*Laws of 1854*, p. 168.) Per V. M. Rice, March 24, 1855.

When the assessment roll of a town is at the county seat in the custody of the board of supervisors, and a tax is voted in its absence, it is a sufficient excuse for not making out the tax list within thirty days after it is voted. The statute is merely directory.

At a district meeting in the town of Wilson, held November 28, 1848, a tax of fifteen dollars was voted for the purpose of furnishing the school with wood during the winter.

The last assessment roll of the town being at the county seat, the trustees did not make out the tax list within the time directed by law. Thinking the tax had become void, they gave the district clerk a verbal notice to cause a special meeting to be held the twentieth day of November for the purpose of voting the tax again. The meeting was held and the tax voted. Also a tax was voted to repair the school-house, without the proper notice being given. Objection being made by some of the inhabitants to this meeting—first, because the notice of the trustees was not written, and, second, because a tax was voted to repair the school-house without the proper notice—the trustees called another meeting, to be held the twenty-third December, for the same purpose. At this meeting the motion to raise the tax for wood was negatived.

From this vote the trustees appeal. According to a vote of the district at the annual meeting, the trustees assumed responsibilities in behalf of the district for which they were directed to raise a tax. Although the tax list may not have been made out within thirty days after the tax was voted, no subsequent vote of the district could change their liability to taxation for wood. The trustees acted under the direction of the district, and could not therefore be made personally responsible, if they acted in good faith. The statute relating to the time of making out a tax list is directory merely, and a failure to comply with it, through accident or for good reasons, does not render a tax that has been voted illegal. The trustees in this case had good reasons for not completing the tax list in thirty days, to wit, the absence of the assessment roll. The trustees are hereby authorized to levy the tax voted at the annual meeting. Per Morgan, January, 1849.

Where a person voted at a district meeting on the ground that he had fifty dollars in personal property liable to taxation, it is the duty of the trustees to include him in their tax list, even though his name be not on the assessment roll of the town; and, if they neglect to do so, the department will set aside their assessment and order them to include the person so left out.

At a district meeting held in district No. 8, Marcy, Oneida county, on the 18th day of August, 1848, a tax of \$100 was voted to be raised by two equal installments, for the purpose of building a school-house.

The trustees made out a tax list for the whole amount, and, after giving the notice required by law, and no one appearing before them to claim reduction, delivered it, with their warrant attached, to the collector.

Objection is now made to this assessment because persons are not included in the tax list who voted at the meeting to raise the tax, upon the qualification of having personal property to the amount of fifty dollars liable to taxation.

In making out the tax list, trustees should assess all the taxable inhabitants of their district, whether they are included in the last assessment roll of the town or not. But they are not required to include a person in a tax list, upon the supposition that he has personal property liable to taxation. They must have satisfactory proof of it, as that a person has come into possession of property since the last assessment roll of the town, by inheritance or otherwise, or, as in the present case, that a person voted at a district meeting under the qualification of having fifty dollars personal property liable to taxation.

The trustees must include such persons in their tax list. It is, therefore, hereby decided that the tax list made out by the trustees of district No. 8, Marcy, in which all the taxable inhabitants of the district were not included, is illegal. Per Morgan, November 20, 1848.

It is the duty of trustees to assess all persons who voted on the ground of having fifty dollars' worth of property, unless before the tax list is made out

such property is converted into real estate, in which case the latter is to be taxed if within the district, and the personal property is to be omitted. Per E. W. Keyes, Deputy Superintendent, March 25, 1864. (*Letters*, vol. 3, pp. 54, 55.)

A mortgage given to secure the purchase-money of real estate is subject to taxation in the district where the mortgagee resides.

From the statements of the county superintendent in this case it appears that on the 12th of March last a tax was voted in district No. 8, in which the appellant resides, for the purpose of erecting a school-house, which was duly assessed on the taxable inhabitants, according to law, by the trustees, on the 23d of the same month. At the time of voting the tax the appellant was the owner of a farm in the district, which was leased to a tenant whose term expired on the 1st of April subsequently. On or about the 18th of March intermediate the voting and the assessment of the tax, he sold the farm to a non-resident of the district and took a mortgage for the purchase-money, stipulating to give possession on the expiration of the lease, from which period interest on the amount secured to be paid by the mortgage was to commence. The principal question involved in the appeal is, as to the right of the trustees to tax the appellant for the amount secured to be paid as the purchase-money of the farm sold by him. The county superintendent decided that the trustees were legally authorized to include the amount in their tax list, under the head of personal property, from which decision the present appeal is brought. The rule of law in this respect has been correctly stated by the county superintendent. It is that, where a farm is sold, the vendor remaining in the district is taxable for the avails of such sale as personal property, whether such avails are in the shape of money or securities for its payment, while the purchaser or his agent, whether resident or non-resident, is taxable for the real estate. In the present case the farm of the appellant had been sold and a mortgage executed for the purchase-money prior to the assessment of the tax previously voted; and in accordance with the principle above laid down, the appellant was clearly taxable for such purchase-money as personal estate, and the purchaser as the non-resident owner of the real estate. Nor can this principle be in any respect affected by the arrangement between the parties relative to the period when possession was to be taken, or interest to commence running on the mortgage. Per S. Young, December 4, 1844.

A tax by installments cannot be raised for any other purpose than "for building, hiring or purchasing a school-house," and then the tax cannot be raised by installments, unless it exceeds \$400.

(Tax must now exceed \$1,000—to be voted in installments.)

District No. 3, Berlin, Rensselaer county, at a meeting held December 20, 1855, voted to repair their school-house, build privy and fence, and move the house, and that the tax for such purpose should be raised by two annual installments.

The law does not permit the vote of a tax to be raised by installments, for any other purpose than that of building, hiring or purchasing a school-house, and even in that case the tax must not be raised by installments unless it exceeds \$400. Per V. M. Rice, February 9, 1856.

A tax voted for the purchase of a site cannot be raised by installments. A tax list for the whole amount must be made out within thirty days from the voting of the tax.

This is an appeal from the proceedings of an adjourned special meeting held on the 4th of May last, at which the site of the school-house of the district was changed and a tax of \$200 voted to build a school-house thereon and to fence the site, such tax to be collected in two equal installments, one-half on the 1st of September and the remainder on the 1st of December next.

There is an objection appearing upon the face of the proceedings, which is fatal to the validity of the vote for raising the tax for purchasing the site. The Superintendent is unable to find any authority in the school law for raising

the amount provided for by the vote of the district in two installments, one payable in September and the other in December next. When a greater sum than \$400 (\$1,000) is directed to be raised for building a school-house, in the manner prescribed by section 19, title 7, School Laws, such amount may be raised in equal annual installments, as therein provided; but where the amount to be raised is for the purpose of a site, no provision exists for raising such amount by installments, and the law requires the tax list for the whole amount to be made out within thirty days from the voting of the tax. The resolution referred to was therefore illegal and invalid for this cause, and so much of the proceedings of the special meeting appealed from as relates to the raising of the tax of \$200 to purchase and fence the site, payable in installments, as therein specified, is hereby set aside. Per V. M. Rice, Superintendent, June 12, 1854.

Persons who are by their profession dedicated to the service of God and the cure of souls, and having a license to preach, or who have complied with the form and mode of ordination, are ministers of the gospel within the law.

This is a case arising in a school district in Philadelphia, Jefferson county, where the trustees doubted the right of a person claiming to be a clergyman, to be exempt from taxation.

The intention of the law relating to the taxation of property belonging to ministers of the gospel must be considered as applicable only to those who are by their profession dedicated to the service of God and the cure of souls. In a church where a license to preach is required, or where a form of ordination is necessary, the license should be obtained or the form complied with in order to entitle an individual to exemption under the law. I am of opinion that a license limited in point of time is sufficient to entitle the individual holding it to an exemption for the time during which it continues. Per Dix, June 11, 1838.

Non-practicing clergymen not entitled to the reduction of \$1,500, made in favor of practicing ministers of the gospel.

Where clergymen have to all intents and purposes given up their profession, the fact that they have for a number of years been engaged in business of an entirely different character, and have not meanwhile been settled over any church as pastor, affords strong ground of presumption, that they have given up the practice of their profession. They are not, in my opinion, entitled to the reduction of \$1,500, which the law makes in favor of practicing ministers of the gospel. The intention of the law is to exempt those who are actual clergymen practicing their profession, or who, if not practicing it, are not engaged in any other business. Per S. D. Barr, Deputy Superintendent, November 23, 1865. (*Letters*, vol. 4, p. 561.)

The personal property of the deceased is taxable in the district where the administrator resides. (*See sec. 5, title 2, chap. 12, R. S., 5th ed.*) Per V. M. Rice, Superintendent, November 24, 1865. (*Letters*, vol. 4, p. 572.)

A lot owned by a church, on which there is no church building, is not exempt from taxation. Per V. M. Rice, Superintendent Public Instruction, April 23, 1866. (*Letters*, vol. 5, p. 325.)

Where territory is added to a district after tax has been voted to build new school-house, but before tax-list for same has been made out and placed in hands of collector, it does not affect the action of district in voting tax, and newly gained territory is liable to pay its part of tax.

The addition of territory to a district after a tax has been voted in such district for the purpose of building a new school-house, but before the tax list for the same has been made out and placed in the hands of the collector, does not affect the action of the district in voting the tax, and the newly acquired territory is liable to pay its proportion of the tax.

A special meeting may, however, be called at any time, and before the tax list has been completed by the delivery to the collector the inhabitants may, by a majority vote, rescind the resolution authorizing a tax for a new school-house. Per V. M. Rice, Superintendent, November 28, 1865. (*Letters*, vol. 4, p. 585.)

Trustees act judicially in levying a tax, and this department will not set up its judgment in opposition to theirs, as to the correctness of the taxation.

It is not the business of this department to assess the property of districts, nor to make out tax lists. The law imposes that duty on trustees, and to a certain extent they act judicially in the discharge of that duty. The supreme court has refused to interfere to correct assessments even where it was proved that property had been erroneously omitted; and this department certainly does not possess greater power in such cases than the supreme court.

The department will not set up its judgment in opposition to that of the trustees, as to the correctness of the taxation. Per V. M. Rice, Superintendent, August 18, 1862.

Distinction between increasing the valuation of real property and increasing the amount of personal property considered.

On an appeal from the proceedings of the trustees in making out a tax list and warrant under the authority of a vote of the district, it appears that the trustees, in making out the tax list complained of, increased the amount of personal property very considerably, while the valuation of the real property was copied substantially from the town roll.

The trustees are directed to ascertain the valuation of taxable property, as far as possible, from the assessment rolls; the discretion concerning valuation is, therefore, not given them where the same is determined by the assessors. But the persons who are taxable, and the amount of taxable property possessed by them, the trustees are to determine.

If, on the assessment roll, they find a man taxed for one hundred acres of land, valued at fifty dollars per acre, they cannot change that valuation, though they may know that it is richly worth one hundred dollars per acre. But, if they find him assessed for one hundred acres of land, when they know that he has taxable, within the district, two hundred acres, they may assess him for the full amount of his property. But this latter condition is not likely to occur, except where property has changed hands, or been increased by accession in the way of new buildings or other conspicuous improvements.

In the assessment of personal property, however, different conditions arise. If a man is found assessed for five thousand dollars, when it is known that he holds bonds and mortgages to the amount of ten thousand dollars, the error is not in the valuation, but in the amount assessed.

The true rule is that trustees have power to correct an error in the amount of property assessed, but not an error in the valuation.

The appeal must, therefore, be dismissed. Per H. H. Van Dyck, Superintendent, December 24, 1858.

Parcels of land bought of different parties, but all connected with the original farm upon which the owner resides, are taxable as one farm in the district of his residence.

This is an appeal of W. S., a resident and tax payer in district No. 18, from a tax assessed by the trustee of district No. 15, upon a parcel of land belonging to the appellant, and lying in district No. 15.

It is in evidence that the appellant is the owner of said parcel of land, that he improves, occupies or cultivates it himself, and that it is attached to the premises upon which he resides, by an unbroken connection of lands owned and occupied by him.

This, to my mind, establishes his claim to regard these parcels of land, bought at different times, of different persons, and lying within the boundaries of different districts, as one farm; the taxation of which, for school purposes,

is carried into that district in which the owner resides. The hardship to the district thus deprived of its taxable property must be conceded; but this is a consideration to address to the Legislature. The provisions of the statute are now clear and imperative, authorizing the taxation in the district as above stated. The appeal is therefore sustained, and the trustee of No. 15 is directed to amend his tax list by omitting therefrom the tax on the parcel of land in question. Per E. W. Keyes, Deputy Superintendent, June 11, 1860.

Where trustees make an original assessment, they must give the legal notice of twenty days, and permit the party claiming a reduction to be heard at a time and place to be designated by the trustees.

The New York Central Railroad company, by their tax agent Franklin Hinchey, bring this appeal from the action of the trustee, in the matter of the assessment of a school district tax on the property of said company, which assessment it is claimed was illegally made, and is, besides, excessive. The assessment complained of is an original assessment made by the trustee, it having been found to be impossible to ascertain the valuation of said company's property from the last assessment roll of the town, and it was completed by him, according to his own statement, on the 24th day of March, 1866. It being an original assessment, the trustee was obliged, in accordance with the provisions of section 68 of title 7, of the General School Law, to proceed "in the same manner as town assessors are required by law to proceed in the valuation of taxable property."

He accordingly posted five public notices in conspicuous places, dated March 24th, 1866, giving notice of the completion of his assessment, and of the fact that said list would for the space of twenty days be open to the inspection of all parties interested, at the house of the trustee, and also giving notice that the said trustee would be personally present on the 7th day of April, 1866, at four o'clock, P. M., for the purpose of reviewing said list. It will be observed that the twenty days would not expire till the 13th day of April, 1866. The law does not authorize assessors to assemble for the purpose of reviewing their assessments, until the day after the expiration of the twenty days' notice which they are required to give. (*Sec. 18, title 2, chap. 13, part 1, R. S.*) Now, as trustees, in making original assessments, are required to observe the rules and regulations prescribed for the government of assessors, it follows that notice given by the aforesaid trustee, of a meeting to review his assessments before the expiration of the twenty days, was illegal, because unauthorized. His notices specified no other time nor place where he would meet persons dissatisfied with his assessments, and review the same, than that above mentioned. On the 10th day of April, 1866, the said company served on the said trustee a notice of their claim to a reduction of \$3,000 on the assessment against them as made by him. This was three days before the expiration of the twenty days' notice to which said company was entitled, and it is nowhere made to appear that the said trustee gave notice to said company, or any person whomsoever, of a time and place when and where he would, after the expiration of the twenty days' notice required by law, meet to consider their claim to a reduction. Without meeting the agent of the company, and without giving to the company legal notice of a time and place when and where he would hear and determine their claim, the said trustee went onward, completed his tax list, issued his warrant, and placed them in the hands of the district collector. This was wrong and unjust. Tax payers have certain rights which assessors or persons acting in the capacity of assessors are bound to respect. These rights cannot be lost to them by the arbitrary or illegal action of public officers. The company in the present instance had a right to a notice of the time and place when and where their claim would be heard by the trustee, who has been guilty of nonfeasance sufficient to invalidate the tax list made out by him. The assessment made out by the trustee on the 24th day of March, 1866, and the tax list and warrant based thereon, are hereby declared illegal and void. Per V. M. Rice, June 6, 1866.

In making out a tax list, if the trustees follow the town roll, it will not be held invalid, although land belonging to the son is assessed to his father. When the town assessors have assessed a minister of the gospel for his property, the trustees, in making out a tax list, must presume that the \$1,500 exemption allowed by statute has been made.

Appellant complains that the trustee, in making out a tax list, pursuant to the vote of a special meeting held in the district, April 22, 1867, omitted to tax Lucius Stillson for fifty acres of land owned by him, and situated and taxable in said district. Also, that one Junius Voorhees, who voted at said special meeting, and who has taxable property above the value of fifty dollars, is not assessed in said tax list. Also, that appellant is a regularly ordained minister of the gospel, and that he claimed an exemption of \$1,500 on that account, which respondent refused to allow. Respondent shows that said Lucius Stillson is a young unmarried man living with his father, and that said fifty acres of land is assessed to the father on said tax list, the same as on the town roll. This being the case, the appellant is not aggrieved, the land is taxed, which is the important thing, and the appellant has no grounds of complaint, even admitting that the land was assessed to the wrong person. In regard to Voorhees, the respondent shows that he is not assessed on the town roll, and that he has no knowledge of any taxable property in his (Voorhees') possession. In making out tax lists, trustees are not bound to vary from the town roll in regard to personal property, except from personal knowledge of an alteration since the town roll was made, or to correct a known or an acknowledged error. I do not see, therefore, that the trustee is at fault in the matter complained of.

Concerning the assessment of appellant, respondent shows that he followed the town roll, and assessed him \$1,830 on property worth at least \$5,000. Appellant does not show that the town assessors did not reduce his valuation to the amount of \$1,500, on account of his being a minister of the gospel, and, not having proved the contrary, the presumption is that the assessors performed their duty and allowed such reduction, if he was entitled to it. The appeal has failed to establish any real grievance on the part of appellant, and it must be, and is hereby, dismissed. Per V. M. Rice, August 17, 1867.

When the board of education or trustees make an original assessment of personal property, and the person assessed does not appear to answer such questions as may be put to him in relation to his estate, but presents by his attorney an insufficient and unsatisfactory affidavit, a reduction of the assessment will be denied.

On or about January 24, 1867, the board of education made out a tax list for the collection of a district tax, upon which the appellant was assessed for \$50,000 personal property. Upon the last assessment roll of said town, appellant is not assessed for personal property. Notice was given to appellant of the assessment made against him by said board of education, and at the appointed time he appeared before said board by attorney, and submitted an affidavit setting forth that he had no personal estate whatever over his indebtedness, "excepting certain government bonds, not taxable." He thereupon claimed a reduction to the full amount of the assessment against him. The board declined to reduce said assessment, whereupon this appeal is brought; the appellant claiming that said board have exceeded their jurisdiction, in making an original assessment, when he is not assessed for personal estate on the town roll, and that, even if they were not bound by the town roll, they were bound to reduce his assessment upon the statements contained in the affidavit submitted by him and heretofore mentioned.

In regard to the first point, as to whether the board of education exceeded their jurisdiction in making an original assessment, the law says: "The valuation of taxable property shall be ascertained, so far as possible, from the last assessment roll of the town, after revision by the assessors." When the valuation of taxable property cannot be ascertained from the last assessment roll of



the town, the trustees shall ascertain the true value of the property to be taxed from the best evidence in their power, giving notice to the persons interested, and proceeding in the same manner as the town assessors are required by law to proceed in the valuation of taxable property. (*Secs. 67 and 68, title 7, chap. 555, Laws of 1864.*)

From the above it is evident that, when a board of trustees acquire jurisdiction, they have the same powers that are possessed by a board of town assessors.

The rule in regard to variations from the town assessment roll in the matter of the valuation of personal estate is more stringent than that in regard to the valuations of real estate. Notwithstanding this fact, the rule is broad enough to give the board of education jurisdiction in this case. Trustees cannot assess an individual for personal property if he has been taxed for none on the last assessment roll of the town, on the mere supposition that he may have more than his debts amount to. The assessment roll of the town settles that matter, and the trustees cannot vary the amount but from some knowledge of an alteration after that roll was made out, or to correct some known and acknowledged error. [John A. Dix, Common School Decisions, 342.]

It is claimed by the board that they had knowledge of an increase in the appellant's personal estate, after the last town assessment roll was made out, though the appellant characterizes their statements as vague and indefinite, and denies their truth.

It is an undisputed fact that, at the time the board of education made out their tax list as aforesaid, they were convinced that the taxable personal estate of the appellant amounted to \$50,000. This being the case, it was their duty to make an original assessment so as to include such property, because, if such property had been acquired since the town roll was made out, they would be varying the amount from knowledge of an alteration after such roll was completed, while, if the appellant possessed the same property at the time the town roll was made out, and the assessors failed to include it in their roll, such failure was an error sufficient to justify the board in making a new assessment under the last clause of the rule above quoted.

It is a case in which the true value of the property in question could not be ascertained from the town assessment roll, and where, therefore, it became the duty of the board to proceed in the same manner that town assessors are by law required to proceed in ascertaining the value of taxable property. This they did, and the appellant, through his attorney, submitted an affidavit claiming reduction. The statements contained in said affidavit have already been set forth. They were unsatisfactory, and as the appellant was not present, and as his attorney was not authorized to make additional statements, nor to answer such questions as would have been pertinent, and which the board had power to ask, the claim for reduction was properly denied. I say the appellant's affidavit is unsatisfactory, because he makes himself the judge of certain questions which it was the province of the board to decide. He does not state what his property is, but says: "I have no personal property subject to taxation under the laws of the State of New York. I have no personal estate whatever, over and above the amount of my indebtedness, except certain bonds of the United States, etc." Thus, for all that is shown in the affidavit, he may have deducted his entire indebtedness from his taxable personal estate, leaving only the non-taxable over and above such indebtedness. That would be a species of sharp practice which assessors ought not to allow. I see no good reason for interfering with the action of the board of education in this matter, and the appeal is, therefore, hereby dismissed. Per V. M. Rice, July 8, 1867.

Where town assessment roll is corrected by the assessors, or adopted by them without correction, it is henceforth the assessment roll of the town for all district taxes. Board of supervisors having equalized taxation, addition or subtraction of a percentage does not change proportionate valuation between inhabitants of same town; but, in joint districts, supervisors are to determine the relative proportion of taxes to be assessed upon real property of parts lying in each town.

When the town assessment roll is corrected by the assessors, or finally adopted by them after notice of its completion without correction, it becomes the assessment roll of the town for the purpose of all district taxes thereafter. The equalization by the board of supervisors being made, the addition or subtraction of a percentage does not change the proportionate valuation as between inhabitants of the same town, and is, therefore, to be disregarded. In joint districts, however, the statute [section 69, title 7, chapter 555 of 1854], provides for equalization by the board of superintendents (supervisors) of the several towns of which the district is composed. They are to determine "the relative proportion of taxes which ought to be assessed upon the real property of the parts" lying in each town. The proper course is to find, in the first place, the aggregate valuation of the part lying in Sherburne from that town roll, of that lying in Hamilton from the Hamilton roll, that in Lebanon from the Lebanon roll.

Suppose the aggregate valuations of the parts to be—Sherburne, \$25,000, Lebanon, \$30,000, and Hamilton, \$45,000. You are to inquire if these are substantially just, as compared with each other. If it appears unjust, then add and subtract until you obtain the fair proportion, according to your judgment, of the value of the property. Suppose that you arrive at the determination that the Sherburne part ought to be valued at \$35,000, Lebanon at \$26,000, and Hamilton at \$39,000—making the same aggregate, you will observe. Then you reduce your determination to writing, stating therein that, in all taxes for school purposes thereafter to be raised in the joint district, thirty-five cents of every dollar thereof ought to be assessed upon the real property of the part of such district lying in the town of Sherburne, according to the valuation of such property in the corrected assessment roll of Sherburne which shall last precede the making out of such tax, twenty-six cents of every dollar in Lebanon, and thirty-nine cents, etc., etc., in Hamilton.

The trustees, in making out future taxes, will have to use all these rolls, and it is desirable, though not imperative, that you should facilitate their labor by giving them the proportions in decimals of a dollar. Per E. Peshine Smith, Deputy Superintendent, March 23, 1855. (*Letters*, vol. 2, p. 280.)

Where it is claimed that land lying in one district is taxable in another adjoining, by virtue of its being part of a parcel, upon which the owner lives, in such adjoining district, that fact must be clearly proved.

The primary condition of real property, rendering it liable to taxation in a given town, ward or district, is that the property shall lie within the bounds of such town, ward or district. Every instance in which this condition is fulfilled without the corresponding liability attaching must be regarded as exceptional, and these exceptions must be strictly construed, according to the spirit of the exceptional provision. It is claimed for the land in question that it is embraced in the exceptional provisions of the statute, exempting it from taxation where it lies by virtue of its being taxable in another district which it joins. The language of the statute is as follows: "The trustee shall apportion the tax on all taxable inhabitants of the district, \* \* \* according to the valuation of the taxable property, which shall be owned or possessed by them at the time of making out such list, within such district, or partly within such district and partly within an adjoining district."

Here is the only provision conferring upon the trustees of a district authority to assess upon their tax lists lands not lying within the bounds of their district. 'This power must be exercised strictly according to the letter of the statute.

The natural legal presumption is that the trustees have not exceeded their legitimate authority, and that the property lying within the limits of a given district is taxable in that district.

This presumption can only be overcome by the production of affirmative and conclusive proof to the contrary. It has ever been the policy of this department, in cases of doubt concerning the liability of land to taxation for school purposes in either of two districts respectively, to give the benefits of the doubt to the district in which the land should lie. This appears to me to be sound policy, conforming to the evident spirit and intention of the statute, and controlled by the spirit of equity, by which, when not in direct contravention of law, this department will be guided. The conditions contemplated by the statute must be affirmatively proved before the presumptions above referred to will be overcome. Per E. W. Keyes, Acting Superintendent, May 16, 1861.

The farm of a non-resident occupied by a tenant, with an agreement on the part of the latter to pay the taxes, may be assessed to such tenant, or to the owner, in the discretion of the trustees.

Trustees may modify or correct the tax list any time before delivery to the collector.

By section 1, chapter 176, Laws of 1851, "Lands occupied by a person other than the owner may be assessed to the owner or occupant, or as non-resident land."

It was evidently the intention of the Legislature by this statute to give to assessors and to trustees a discretionary power to assess lands not occupied by the owner, that the tax might be more easily or certainly collected. Accordingly, the trustees must exercise their discretion as to whom such lands shall be assessed.

The signing of a tax list is merely a ministerial act, and is not a final and conclusive act of judgment. The warrant has no operative force until it is delivered to the collector, and the trustees may, therefore, at any time after signing but before delivering it to the collector, alter or modify it, without rendering it void. Per V. M. Rice, Superintendent, April 9, 1863.

When a person ceases to be an inhabitant of a district after a district tax is voted and before the expiration of the time allowed trustees in which to make out their tax list, he should be omitted from such tax list.

On the 9th day of February, 1857, the appellant made a contract for the sale of his farm in the district, stipulating therein to execute a deed and transfer possession on the first day of April following. On the first day of April the contract was executed on both sides.

On the 14th day of March, 1857, after the equitable title to the farm of the appellant had been alienated by him, but before the freehold had legally passed, a district meeting voted a tax to build a school-house. The tax list was made out on the 30th day of March, and the appellant was included therein as the owner of the farm. He was notified of the fact, and on the next day removed from the district and became the resident of another.

It is obviously just that the tax for a permanent improvement in a district should be borne by those who are to receive the benefit of it, and those who in good faith cease to be inhabitants before the expenditure for such improvements is made should be exempted from contribution whenever the letter of the statute will permit.

Trustees are directed by the law to make out their tax list within thirty days after the meeting at which the tax is voted, and it is made their duty to deliver the same to the collector after the expiration of thirty days. Where a person has, during that time, ceased to be an inhabitant of the district in pursuance of an arrangement previously made, he ought to be exempted, and the person who, under such circumstances, became the owner of the property, should bear the burden of an expenditure by which its value is permanently increased. Per E. P. Smith, Deputy Superintendent, June 17, 1857.

A person set off from one district to another, by an order that does not take effect until three months after its issue, will be liable on any taxes levied in the district from which he is set off, prior to the taking effect of such order.

In March, 1857, an order was made, by the school commissioner having jurisdiction, transferring the lands of the appellant and others, from district No. 1 to district No. 2. The trustees of No. 1 having withheld their consent, this order will not take effect till the expiration of three months from the first day of April, 1857, when notice thereof was served. While the alteration was inchoate, the district meeting was held, against the proceedings of which this appeal is directed, and a tax to defray the expenses of changing site and building a new school-house was voted. The appellant objects that the effect will be to charge him with the payment of a tax for constructing a school-house from which he is to receive no benefit.

*Held*, that this was a proper consideration for the judgment of the inhabitants of district No. 1, in determining whether they would build at once or postpone till after the alteration should have taken effect. The appellant continues an inhabitant of the district for all purposes until the first day of July. If the appellant is set off from the district without his consent, he will be exempted from paying a tax for building in No. 2, for four years. If he has given his consent, he is responsible for all the consequences, and cannot be permitted to trammel the action of either district for the purpose of avoiding any personal charge or inconvenience. Per H. H. Van Dyck, Superintendent, June 2, 1857.

Assessment of a bond and mortgage as personal property is good, but at the same time assessing the owner thereof for the farm upon which he holds the mortgage, and upon which he resides only temporarily, is discontinued.

This is an appeal of J. P. from an assessment against him on a tax list made out by the sole trustee. The facts upon which the appellant relies are as follows: On or about the first of October, 1859, he agreed to sell to one D. B. the farm then owned and occupied by said appellant. The agreement contemplated that the purchase-money (\$12,000) should be paid on the first of April following, at which time possession of the said premises was to be given. A regular deed of conveyance was executed by the owner to the purchaser, and a regular bond and mortgage conditioned for the payment of the purchase-money was given on the other hand. These conveyances were all duly recorded. The position that the appellant maintains is that this deed was not a sale or conveyance, but a convenient substitute for a contract of sale, and that the mortgage not being given for an actual, but merely for a contingent indebtedness, is not personal property liable for taxation.

I fail to apprehend this matter in the light in which the appellant presents it. The propriety of going back of the records to inquire into their meaning, is, upon an application of this kind, extremely doubtful, to say the least. But if we were to do this, we find that there has been, in good faith, duly executed, a deed of conveyance. Both parties so regard it. Clearly, to my mind, D. B. is in law and in fact the owner of the farm herein spoken of. By the purchase of the said farm, he became indebted to the appellant in the sum of \$12,000, for which he executed the mortgage before named. This can be regarded as no other than personal property, as defined in part 1, chapter 13, title 1, section 3, Revised Statutes, 4th edition, and as such liable for taxation for school purposes under section 85, chapter 480, Laws of 1847. I do not see how, under the statute, the trustee could exercise any discretion. His duty was plain and unavoidable.

Concerning the taxation of the farm, the trustee could, under section 1, chapter 176, Laws of 1851, assess it to the owner or occupant, or as non-resident lands. He exercised the discretion thus conferred and assessed it to the appellant as "occupant." I should be disposed to give considerable weight to the presumption of the just exercise of this discretion, if it were true, as alleged, that the appellant, as tenant, can recover the amount thus paid from the owner. By reference to the statute, section 88, chapter 480, Laws of 1847, it will be

seen that the purposes for which this tax was levied will bar any recovery from the owner by the tenant. The appellant is theretore without any remedy under the statute. Under this aspect of the case, I cannot but think it just and right to have assessed the farm to D. B., the owner.

The general conclusion at which I arrive is, therefore, that the assessment of the bond and mortgage to the appellant as personal property is right and legal, but that the farm occupied by him should be assessed to the owner, D. B.; and the trustee is authorized and directed to amend his tax list by assessing the tax on said farm as above indicated. Per H. H. Van Dyck, Superintendent, April 23, 1860.

A stockholder in a national banking association is liable to be taxed for personal property in the district where the bank is located, on the amount of stock owned by him in such bank.

In the matter submitted by the trustees of district No. 1, Kingsbury, Washington county, and A. F. Hitchcock, a non-resident of said district, the following facts appear:

The First National Bank of Sandy Hill is located, and does business within said district No. 1. A. F. Hitchcock is a stockholder in said bank, but does not reside in said district.

The trustees have assessed the said A. F. Hitchcock, upon a tax list made out by them in said district, for the amount of stock owned by him in said bank, and have taxed him thereon.

The question presented is whether such assessment is lawfully made, and hence whether the tax levied thereon can be lawfully collected.

The capital of these national banks is, by law of Congress, required to be invested in bonds or securities of the United States, and the stocks, bonds, or other securities of the United States are, by another act of Congress (the constitutionality of which has been affirmed by the supreme court of the United States) exempted from taxation by any State. Hence, it follows that the First National Bank of Sandy Hill is not, as a corporation, liable to taxation on its capital invested in United States securities.

The act of Congress, passed June 3, 1864, authorizing the formation of national banking associations, provides, however, "That nothing in this act shall be construed to prevent all the shares in any of the said associations, held by any person or body corporate, from being included in the valuation of the personal property of such person or corporation in the assessment of taxes imposed by or under State authority, at the place where such bank is located, and not elsewhere."

While, therefore, the capital of the banking association is, by the act of Congress, exempt from State or local taxation, the shares of stock owned by any individual or corporation in such association, are not exempt, but are left to the operation of the State laws concerning taxation, under certain limitations, one of which is that such shares shall be assessed only at the place where the bank is located.

It must follow that the trustees of the district where Mr. Hitchcock resides can have no power to assess him for the shares owned by him in a bank located in another district. Discussion as to the policy or justice of these provisions is fruitless; our only concern is with the law as it stands, and in this view the above conclusion appears inevitable.

We have only to inquire further whether there is authority under the laws of this State for the assessment of these shares of Mr. Hitchcock by the trustees of district No. 1, where the bank is located. To determine this question, reference must of course be made to the laws of this State relating to taxation. Those pertinent to the issue are the following: "All lands and all personal estate within this State, whether owned by individuals or by corporations, shall be liable to taxation, subject to the exemptions hereinafter specified." (1 R. S. [5th ed.,] 905, § 1.)

The terms "personal estate" and "personal property," wherever they occur in this chapter, shall be construed to include (among other things enumerated) stocks in moneyed corporations. (1 *R. S.* [5th ed.], 907, § 4.)

"The owner or holder of stock in any incorporated company, liable to taxation on its capital, shall not be taxed as an individual for such stock." (1 *R. S.* [5th ed.], 907, § 14.)

From the above citations we cannot fail to draw the following conclusions:

1. That all personal property not exempted is liable to taxation;
2. That shares of stock in a banking association, incorporated by whatever authority, are "personal property;"

3. That the capital of a national bank, being exempt from taxation (not liable thereto), under the operation of the higher law of the United States, the owner or holder of stock in such banking association is not relieved from liability to taxation on such stock by virtue of section fourteen above cited.

Ordinarily, these banking associations would be taxed as a unit—a corporate body—but the supreme law of the land, the act of Congress, has decreed that they shall not be taxed in that way. It has not overruled the law of the State, which says they shall be taxed, but has directed that the tax shall be assessed upon the shares of the individual or corporate holders thereof. The trustees thus derive their authority to tax or assess these shares from two sources of power—State and national. The State gives the power to assess and prescribes the mode; the national government yields assent to the power to assess, but overrules, in this particular instance, the mode, substituting its own. The result is precisely the same under the operation of the law of Congress that it would be under the operation of the State law.

Believing, therefore, that the trustees of district No. 1, Kingsbury, have acted under the authority of the law in the assessment referred to, and that, to have omitted to make this assessment in the way it was made, would be to have exempted the stock in said bank from any taxation whatever for school purposes, I can do no less than approve and affirm their action. Per E. W. Keyes, Deputy Superintendent, December 8, 1864.

Where the inhabitants at a district meeting direct the trustees to do an act which they are authorized by law to direct, as the removal of a school-house, the trustees may levy a tax to defray the expense, without a vote of the district.

The inhabitants of district No. 17, town of Wilna, voted a new site for the school-house, and directed the trustees to move the house by a "bee."

The trustees made a "bee," but, there not being much of a "turn out" on the part of the inhabitants, they were only able to get the school-house into the highway. Foreseeing the difficulty attending the removal by such means, and not receiving the requisite aid, the trustees moved the school-house to the site selected at an expense of twenty-five dollars.

A special meeting was called on the 4th December, 1847, without stating the object of it in the notices, at which a tax was voted to meet the expenses of the trustees. Only four legal voters were present at the meeting.

The vote directing the trustees to move the house by a "bee" was void, as they could have no authority over voluntary aid, and could not depend upon it as a means of moving the school-house.

When the inhabitants of a district direct the trustees to perform a work where expenses are to be incurred, the trustees are authorized to raise the amount thereof, by tax, without a vote of the district. In this case the trustees would necessarily incur an expense in moving the school-house, which is chargeable to the district and can be collected by tax the same as if it were voted. (*School Laws*, No. 134.) And although the vote of December 4, 1847, to raise the tax was illegal on account of the want of proper notice, the levying of the tax was legal on the ground that the trustees possessed the requisite power without a vote of the district to raise the tax. (*Section 51, title 7, chapter 555, Laws of 1864.*)

The appeal is dismissed. Per A. G. Johnson, Deputy Superintendent, August 3, 1848.

In case of vacancy two or even one trustee may do any official act. The expense of investigating a title is a part of the expense of a site, and may be legally included in a tax.

When a vacancy exists in the office of trustee, the remaining trustees are expressly authorized by law to call a meeting of the inhabitants to fill such vacancy, and the inhabitants when legally assembled at any annual or special meeting have power to raise a tax for the various purposes recognized by law. There is no doubt that two, or even one trustee, may legally do any official act during the actual existence of a vacancy in the office of their or his colleagues.

It has been held that the expense of recording a deed may be included in a tax for purchasing a site, inasmuch as it is necessary to perfect the title. On the same principle, the expense of investigating the title is a necessary part of the expense of procuring a site. Per Young, April 25, 1842.

A tax may be voted, levied and collected in a school district to purchase a site and school-house, but the money cannot be applied until a valid title is obtained.

The appellants in this case seek to set aside the proceedings of a special meeting held in district No. 9, on the 29th of November last, at which resolutions were adopted for the purchase of a new site and house, upon the ground that a valid legal title cannot be obtained to such site and house. They allege that the house was built by private subscription, and is now owned by various persons in and out of the district, some of whom will not consent to transfer their right to the district. This allegation, vague and general as it is, is explicitly met and denied by the trustees, who assert that they can procure a good title. This question of title, however, is one which cannot come up at this stage of the proceedings. The tax voted may legally be levied and collected, but cannot be applied until a valid legal title is obtained.

From the proofs before him, the Superintendent entertains no doubt of the sufficiency of the title, and so much of the appeal as relates to this portion of the proceedings of the meeting is therefore dismissed. Per Morgan, January 18, 1851.

When a tax list has been made out, but not delivered to the collector, it is no objection to the trustees calling another meeting of the inhabitants to reconsider the proceedings of the meeting at which the tax was voted, if requested by a respectable number of the inhabitants.

In this case, the appellants seek to set aside the proceedings of a special meeting, held on the 20th of February last, at which a previous vote of the district relative to the length of time during which a school should be taught was reconsidered, and a less period adopted. Under the preceding vote, the tax list had been made out by the trustees, but the warrant had not been delivered to the collector. The Superintendent is of opinion that under such circumstances it was legally competent to the inhabitants to reconsider the previous vote. Per Morgan, April 23, 1850.

In making out a tax list, all the trustees must be consulted and act together.

Two of the trustees of district No. 1, Hornby, Steuben county, made out a tax list without notifying or consulting with the third. The other trustee and Mr. Chalion Headley appealed, and asked that the said tax list be set aside, without pointing out any error or alleging any special grievance.

It is a clear and undoubted principle that the public have the right to the counsel and service of all the members of a board of trustees, and of every other tribunal, in all their doings which involve the exercise of discretion and judgment. The making out of a tax list is of this character. The trustees have to determine who are taxable inhabitants, and for what amount they shall be respectively assessed. It is true that, upon examination, they may ascertain that the taxable inhabitants of their district are the same persons and no other than those enumerated in the last completed town assessment roll, and that their property respectively remains, without any variation, as it

did at the time such roll was completed. That determination having been reached, the duty of copying so much of the assessment roll as relates to the inhabitants and property of their district is a purely clerical one, which may as well be discharged by one trustee as by three. It is, however, always a preliminary question, whether such be the fact, and the public have an interest that each of the trustees should be heard upon this question. A trustee who is absent might know and be able to show his colleagues that a particular inhabitant had received a large accession to his personal property, and thus reduce the contribution of every other tax payer.

The appeal is therefore sustained and the proceedings of the trustees declared irregular. Per E. P. Smith, Deputy Superintendent, November 8, 1855.

The trustees of a school district have no power to correct a tax list after a portion of the tax has been collected, without permission from the Department of Public Instruction.

The town superintendent of Crown Point having, February 19, 1847, regularly formed a new district in said town, served a notice upon Aaron T. Townsend, a taxable inhabitant of said district, together with a copy of the order forming the district, requiring him to notify each taxable inhabitant of a district meeting to be held on the first of March following. Accordingly, notice was given to the inhabitants by notifying them of the time and place of holding the meeting.

A meeting was held on the 1st of March, and adjourned to the 15th, at which a tax was voted to build a school-house. The tax list was made out by the trustees within thirty days, as required by law, and was put into the hands of the collector on the 22d of January, 1848. On the 5th of February, the trustees corrected the tax list without the approval of this department, having discovered errors in it, and, attaching the corrected list to the old warrant, delivered it to the collector. This was an irregularity on the part of the trustees after a portion of the tax had been collected. The original tax list is the one which is in force, and if the trustees have discovered an error in it they may, after refunding any amount that may have been collected on such tax list, if the same shall be required, amend and correct such tax list in conformity to law, and redeliver it to the collector with the old warrant attached. Per Morgan, June, 1848.

A tax list, made out by one of the trustees and signed by two of them, without notice to, or consultation with, the third trustee, will be set aside.

On an appeal from the proceedings of two of the trustees in making out a tax list, it appears that the said tax list was made out by one of them and issued with the signature of but two attached, the third not having been consulted concerning it.

The statute expressly requires the trustees to meet and act together in determining the assessment; and, in the instructions from this department in the circular containing the amendment to the school law, passed April 12, 1858, this point was especially dwelt upon, and the liability of trustees was distinctly set forth.

I have, therefore, no alternative but to declare the tax list invalid, and to order the trustees to meet together for the purpose of making out a new one. Per H. H. Van Dyck, Superintendent, January 4, 1859.

The form of a tax list is deemed important.

The form of the tax list is of more importance than is generally conceived, and there is no reason why that prescribed in the Code of Public Instruction should not be followed. It might not vitiate the tax list that its form was not precisely like that required by law, but it affords a substantial ground for directing the trustees again to make out their list. Per H. H. Van Dyck, Superintendent, March 25, 1858.



The authority for levying a tax must not be indefinite. Taxes should be specifically voted.

At the annual meeting the trustees presented their report of the receipts and disbursements of money for the past year, with a statement of the expenses already incurred, which they had no means to meet, and of necessary expenses for the ensuing year, and recommended that a tax be levied for the purpose of paying such arrearages and such expenses as were set forth in the statement. This report of the trustees was adopted, and the appeal relates to the action of the meeting in adopting said report.

I concur fully with the appellants in the opinion that the adoption of the report of the trustees does not authorize the levy of a tax agreeable to the recommendations therein contained. A tax must be specifically voted before it can be lawfully levied or collected. The adoption of the report by the meeting is merely to be regarded as an approval of the recommendations of the trustees, without authorizing their enforcement. Per E. W. Keyes, Deputy Superintendent, December 3, 1859.

A vote to raise by tax a certain sum to build a school-house, the same to be paid at discretion in labor or materials, is illegal and void.

A district voted to raise a tax of \$150, for the purpose of building a school-house, with the privilege of paying said tax in labor and material. The trustees made out a tax list for the amount, and enforced the collection of it. *Held*, that the Code prescribes but one mode of proceeding in the assessment and collection of taxes, and evidently recognizes but one material as a lawful tender in payment thereof. If, therefore, the district vote to raise a tax, and prescribe any other mode of collection, or any other material as lawful in payment, they and the statute are in conflict, and the trustees, if they proceed to collect the tax at all, must do so in the mode prescribed by law. But the interest of the inhabitants in imposing these conditions is evidently to have the tax collected in that manner or not at all. It may be safely assumed that the inducement with many to vote the tax was the accommodation afforded by the conditions annexed, and that without these they would have opposed the tax. The department must, therefore, regard this as one of those cases of complicated action, in which the dependence of several provisions is so intricate, that invalidity in any part renders the whole invalid. Per H. H. Van Dyck, Superintendent, September 14, 1857.

A tax may be voted to pay expenses beyond estimates expended by trustees in building an authorized school-house.

A tax was voted to defray the excess beyond the estimates expended by the trustees in building a new school-house, from which vote there is an appeal.

*Held*, that a majority of those present and voting was sufficient to give validity to the resolution, and that the appeal must be dismissed. Per V. M. Rice Superintendent, January 11, 1856.

A district has no power to exempt any inhabitant from taxation in consideration of a gift by him of a site.

A taxable inhabitant was intentionally omitted in the tax list, in consideration of his having given half an acre of land for the site of the school-house. *Held*, on appeal, that the trustees are required by law to assess every tax upon all the taxable inhabitants of the district, and that a district meeting has no power to relieve them from this obligation. Per V. M. Rice, Superintendent, February 4, 1857.

When a special meeting had voted a tax for building a new house, and had adjourned four weeks to consider proposals for building, and at the adjourned meeting voted to rescind the vote levying the tax, the vote to rescind was legal and valid, even though the tax list had been made out, and a part of the tax voluntarily paid.

At a special meeting duly called a vote was taken and carried, ayes 28, noes 24, to raise \$1,000 by tax on the district, for the purpose of building a new school-house. The meeting then adjourned for four weeks for the purpose of

receiving propositions, that might meantime be submitted to the trustees, relative to site. At the adjourned meeting a motion was carried to reconsider the vote of the last meeting, after which the meeting adjourned *sine die*.

In the mean time the tax list for the \$1,000 had been made out, and a part of the same had been voluntarily collected before the adjourned meeting; but this will avail nothing, as the trustees could not issue their warrant till the expiration of thirty days after the tax was voted. No legal collection could therefore have been made before that time. Voluntary payments may have been made which the trustees would be authorized to receive, but these are not such collections as the courts contemplate in order to place the repeal of a tax levy beyond the power of a district meeting.

It is assumed by the appellants that, the special meeting being adjourned for a specific purpose, no other business could be transacted than that specified in the notice for adjournment. This is an error. The meeting was competent to transact any business brought before it.

From the evidence before me, I am compelled to regard the proceedings of the adjourned meeting as a fair expression of the will of the district upon levying the tax, and it is unfavorable to such action. The vote at the adjourned meeting is much larger than that at the special meeting; it is plain, therefore, that no advantage was taken of the absence of any considerable number of the voters by the majority in their vote to rescind the tax. Under these circumstances, therefore, the proceedings of the adjourned meeting are declared legal and are hereby affirmed. Per H. H. Van Dyck, Superintendent, February 18, 1858.

Objection to a tax list on the ground that property is omitted therefrom must be taken in time.

The primary objection to this appeal is that the appellants neglected the natural and proper remedy, provided by law, for the errors herein complained of. It is alleged that certain property has been omitted from the tax list that should be assessed. The trustees made an original assessment, and gave the notices required by law. These appellants did not appear to compare their assessment with others, but suffered the warrant to go into the hands of the collector before making any objection. I think they are precluded, by their own neglect, from any relief at the hands of this department. Per H. H. Van Dyck, Superintendent, March 21, 1860.

Where a tax is voted to build a school-house, the trustees are not required, unless by a direct vote of the district, to deduct from that sum the proceeds of the sale of the old house.

On an appeal from a tax list made out by the trustees, the objection raised is that the sum for which the old house was sold was not deducted from the amount of tax voted to build a new house.

Whatever may have been the law upon this point formerly, there is now no requirement that the proceeds of the sale of the old house shall be applied to the reduction of the tax voted for a new house, unless the inhabitants by their votes so direct.

Appeal dismissed. Per E. W. Keyes, Deputy Superintendent, May 5, 1863.

Where trustees are authorized to build a school-house of certain dimensions, and they slightly vary from these dimensions by causing the house to be built larger, paying for the excess out of their own funds, the district must pay such sum as the house would have cost if built of the specified size.

The trustees were instructed to build a house 24 feet long by 20 feet wide. They made the contract accordingly; but, in order to use the old foundation, and thereby save the expense of laying new, they agreed with the builder to construct the house of the same size as the old one, viz., 26 by 22 feet, and the difference in price they agreed to pay out of their own pockets. The contract for building of the size authorized by the district was \$280. The trustees also

incurred an expense of four dollars for removing the rubbish around the building. Some persons refused to pay their portion of the tax of \$284 levied by the trustees to pay for the house, and, at a district meeting called to ratify the action of the trustees, the meeting refused to ratify. From this refusal the trustees appeal.

*Held*, that the trustees substantially complied with the resolution of the district, and that the tax of \$284, for building the house of the original size, and removing the rubbish, was properly and legally levied, and may be collected. Per V. M. Rice, Superintendent, September 12, 1856.

## TEACHER.

Where a teacher is improperly dismissed, he is entitled to full wages for the period named in the contract.

A. B. Brayley had been employed to teach school in district No. 1, in the town of Carroll, for four months, at thirteen dollars per month. After he had taught two and a half months, some of the inhabitants withdrew their children. For various causes, others followed their example, until the school dwindled down to two or three scholars, when the trustees ordered him to quit, about three weeks before the expiration of his term, upon the understanding that he should complete it if called upon.

A special meeting, subsequently held, passed a vote to pay the teacher for the time actually employed, and no longer. The trustees refused to pay him for the full time, and he appealed. He had performed, or been at all times ready to perform, the contract on his part; he was duly qualified; his school had been visited by the town and county authorities, and approved by them. The vote of the district could not affect the rights of the parties. The trustees were bound to fulfill the contract. Per Young, March 19, 1842.

Trustees cannot dismiss a teacher on the ground that some of the inhabitants are dissatisfied with him, while they themselves are not dissatisfied.

James M. Grooty was employed to teach school in district No. 2, New Baltimore, for five months, at eleven dollars a month, on condition that, if the trustees should find any fault with him at the end of a month, they were to notify him, pay him for the month's services and dismiss him. He taught school from the 9th of November to the 21st day of January, when the trustees dismissed him, on the ground of dissatisfaction on the part of some of the inhabitants, at the same time publicly stating that they had no cause of complaint.

One month was ample time to discover faults of character, discipline, government and modes of teaching, and, if the trustees did not, within that time, give Mr. Grooty notice, they could not subsequently dismiss him and release themselves from their contract. A mere allegation that the inhabitants were dissatisfied would be insufficient cause of dismissal at any time. They should be able to show who are dissatisfied, and for what cause.

The teacher did not undertake, expressly or by implication, to satisfy every person in the district, and it would have been absurd to require or expect it. The trustees were ordered to reinstate Mr. Grooty in his school, and, at the end of five months from November 19, to pay him his wages at eleven dollars per month, without any deduction for the time between his dismissal and his reinstatement. Per Spencer, March 6, 1841.

Where one trustee engages a teacher to teach in the place designated by a district meeting and the other two engage a teacher to teach in a place selected by themselves, neither is a legal school.

One trustee cannot legally engage a teacher for the district, neither can two trustees legally engage a teacher to teach in a place designated by themselves when the district have selected another place.

The school-house in district No. 7, Guilford, Chenango county, was destroyed by fire in January, 1847. In February following, the inhabitants, in district meeting, voted to hire a temporary place for the school. Accordingly, a school was regularly opened on the 12th of May, 1847, in the place so designated. In the following winter, two of the trustees opened a school in another place without the vote of the district, and gave an order upon the town superintendent for two-thirds of the teacher's money apportioned to the district, which was paid.

In the mean time, Mr. Mills, the other trustee, opened a school in the house which had been designated by the district for the summer school.

Each party claims a right to the public money, but neither is entitled to it, as neither school was legally established.

In all cases the inhabitants of a district are to designate the place where the school shall be kept, and trustees alone are responsible for the expenses incurred in support of a school opened by them without this authority from the district.

One trustee cannot hire a teacher or open a school without the concurrence of at least one other trustee. Nor is any act of the trustees valid without all being consulted, and without the concurrence of a majority.

The public money obtained on the order of the two trustees could not be applied to the payment of their teacher, as the school was not a district school.

It is therefore hereby adjudged and decided that the public money apportioned to district No. 7, Guilford, for teacher's wages, cannot be applied to the payment of either of the teachers employed in the schools hereinbefore mentioned. Per Morgan, July 14, 1848.

Every contract made with teachers in our common schools necessarily includes the condition that the agreement cannot be binding for a longer period than teachers may hold certificates of qualification, and on the annulling of their certificates all claim for future services ceases.

The appellant, in the year 1845, had made a contract with the trustees of school district No. 10, in the town of Champion, to teach the district school for a limited period, and at a stipulated price per month for his services; and, before the expiration of the term limited by the contract, on the 27th day of November, 1845, for causes satisfactory to that officer, the town superintendent annulled the certificate of qualification, which act was affirmed by the county superintendent.

On appeal to the department, it was deemed advisable, for the reasons stated in the decision then given, not to interfere with the acts of these officers, by a formal reversal of their decisions.

The appellant claimed of the trustees of the district his wages, under his contract, for the unexpired term after the annulment of his certificate, as before mentioned; and, those officers, or a majority of them, having refused payment, he appealed to the county superintendent, who declined interfering, on the ground that the appellant had no legal claim to compensation under his contract from the time his license as a teacher was annulled, and from this determination the appellant has again appealed to this department.

Every contract made by trustees with a teacher in our common schools necessarily includes the condition that the agreement cannot be binding upon them for a longer period than the teacher may hold a certificate of qualification. I do not mean by this that trustees cannot with a full knowledge of all the facts in regard to a want of license make a contract with an unlicensed teacher which will bind them personally, but I do hold that this department cannot in the exercise of its rightful powers and jurisdiction be called upon to enforce a performance of any such contract.

I assume that when the trustees made the contract with the appellant for his services as a teacher, both parties understood that the appellant had a proper license, and that the contract was to cease whenever he became legally disqualified as such; but if he be able to establish a different contract by competent proof, then he must resort to another tribunal, for this department cannot afford him any relief.

The decision of the county superintendent is affirmed and the appeal dismissed. Per N. S. Benton, July 13, 1846.

A teacher employed under a contract, to teach by the month, specified as twenty-six days, is entitled to dismiss school every Saturday afternoon, or each alternate Saturday, according to the custom of the country, and the trustees have no right to withhold any portion of the amount due him for so doing.

A contract was made between Mary Dwight and Jacob Harder, one of the trustees of district No. 1, Windsor, and part in Conklin, by which she was to teach the district school at three dollars a week for an indefinite time.

The trustees dissenting, on the twenty-second day of November, a new contract was made between said Mary Dwight and Jacob Harder, with the consent of the other trustee, Alanson Alden, by which she was to teach four months, at the rate of twelve dollars per month of twenty-six days.

The said Mary Dwight taught from November 22, 1847, to March 21, 1848, inclusive, a period of one hundred and twenty-one days, deducting Sundays. She therefore taught four months of twenty-six days, according to contract.

But it is alleged by Harder that the said Mary agreed to teach Saturdays or lose those days. The said Mary denies this, and alleges that "Saturdays" were not mentioned when the contract was made. The affidavit of Jared N. Hoadley confirms the allegations of said Mary Dwight. Hoadley swears that Mary Dwight agreed to teach twenty-six days for twelve dollars, on condition that she taught four months.

Hoadley's affidavit proves a contract by the month, at twelve dollars. Such a contract would authorize the teacher to dismiss her school every holiday and Saturday afternoon, or every alternate Saturday, according to the custom of the district. And the custom of dismissing school every Saturday afternoon or every alternate Saturday is a good and wholesome one.

The amount withheld by the trustees from Mary Dwight is \$3.11. It is adjudged and decreed that said Mary is entitled to receive from said trustees said sum of \$3.11, in addition to the sum of \$44.89 already paid to her, and the trustees are hereby ordered to pay the same to her forthwith. Per Morgan, June 7, 1848.

A teacher can only be employed by the trustees. Therefore a vote taken at a district meeting to dismiss a teacher and substitute another in her place is illegal and void.

Samuel T. Peck and James Smith, two of the trustees of district No. 1, Livingston, hired Miss Susannah Smith to teach their winter school, to commence November 30, 1848. Mr. Lament, the other trustee, was consulted, but did not consent to the contract.

Miss Smith commenced the school in the school-house of the district, at the stipulated time.

Mr. Lament, not being satisfied with the agreement of the other trustees, hired Miss Horford to teach a school in another room.

At a special meeting held in the district January 20, 1849, for the purpose of voting a tax to repair the school-house, and for other purposes, a vote was taken and carried to substitute Miss Horford in the school-house, as teacher, in place of Miss Smith.

From this proceeding the two trustees appeal.

In employing teachers, the trustees should consult, as far as possible, the wishes of the inhabitants of the district. But when the trustees have contracted with a teacher, thereby binding themselves and the district, the inhabitants cannot free themselves from the obligations thus imposed by the official acts of the trustees.

Teachers can be employed only by trustees.

A contract made by two trustees, the third being consulted, is valid; but one trustee can perform no official act without the concurrence of at least another and a consultation with both.

In this case, Miss Smith was legally employed as the teacher for the district, and could not be dismissed except by the trustees. Therefore the proceedings of the district meeting on the 20th of January, to dismiss Miss Smith and substitute Miss Horford as teacher, were illegal and void, and Miss Horford is not entitled to receive any of the public money or to continue her instruction in the district school-house. Appeal sustained. Per Morgan, March 17, 1849.

Where one trustee employs a teacher without consulting with his associates, and his action is silently acquiesced in until the expiration of the term, their approval of the contract will be implied, and they should sign an order for the public money for teachers' wages when applied to.

This is an appeal taken by a teacher from the action of two of the trustees of school district No. 8, in the town of Oxford, Chenango county. Said trustees refuse to sign an order upon the town superintendent of Oxford for the sum of \$20 to compensate the appellant for her services as teacher of the school in said district, upon the ground that the appellant was employed in January, 1854, as teacher by George Stratton, the third trustee, upon his own responsibility, the respondents not having been informed by said Stratton of the employment of the appellant, nor of the conditions either of time, wages or qualifications; and that therefore appellant is not entitled to any share of the public money for the school taught by her last winter.

It appears that said Harriet Webb was employed by one of the trustees in his official capacity to teach a public school in said district at the rate of two dollars a week, and that she was so employed ten weeks. Neither of the other trustees appear to have dissented. They cannot be presumed to have been ignorant of the fact, and must be considered as having acquiesced. This is the view which would be taken in any court of judicature having jurisdiction of the case.

The appeal is therefore sustained, and the town superintendent of the town of Oxford is hereby ordered to pay to the said Harriet Webb, for her services as teacher in said district, the sum of \$20 from the share of the public money belonging to said district. Per V. M. Rice, October 23, 1854.

Where two trustees employ a teacher, without consulting the third, the contract is binding only upon the trustees making the bargain, unless the conduct of the third trustee is such that his acquiescence may fairly be inferred.

This is an appeal of a trustee of school district No. 6, in the town of Vernon, Oneida county, from the action of his two colleagues, upon the ground that a teacher has been employed to instruct the school of said district, commencing on the 30th day of October last, and to continue through the winter, in and relating to which engagement the appellant was not consulted, and had no knowledge. The respondents acknowledge the fact as charged, pleading that they had no suspicion that he would object.

The basis of this appeal rests upon broad principles, involved in the general laws of trust which govern all fiduciary transactions. Contracts entered into by all the trustees of a school district, and signed by two of them, are binding; and when so signed, the presence of the third is presumed until the contrary is shown. Two trustees can contract against the will of the third, if he was duly notified of a meeting of the trustees, or was consulted and refused to act. (9 *Wendell*, 17.)

The appellant not being consulted in the contract with the teacher, Miss Delia A. C. Alford, could in no sense be responsible, unless when he discovered the fact he should have acquiesced.

Yet no fiduciary transaction can exist without all parties to it are cognizant. The contract in question is binding only with the respondents, but is void so far as the trustees officially and the district are concerned.

The appeal is therefore sustained. Per V. M. Rice, November 21, 1854.

A consultation of two trustees, without the presence and advice of the third, can result in nothing which can be regarded as the action of the board, unless the third has been regularly notified and fails to be present.

The controversy, in this case, respects the validity of the contracts with three different teachers. No one of them has been engaged in a legal manner, for in no case have the trustees met and consulted together.

A consultation of two trustees meeting by themselves, without the presence and advice of the third, can result in nothing which can be regarded as the action of the board, unless the third trustee has been regularly notified of a meeting, and continues absent after his colleagues have waited a reasonable time for his attendance.

The trustees cannot delegate any discretionary power to a third person to execute the decision to which they may have arrived, still less can any one of them do so, although they may doubtless employ the services of a messenger to convey to a proposed teacher intelligence of a positive and unconditional determination; but this, for the sake of certainty, and to preserve the evidence of the matter, should be reduced to writing and authenticated by the signatures of a majority.

It results in this case that, without reference to who may be the legal trustees, none of them have contracted with any teacher in a manner rendering their acts obligatory upon the district. Whether they have rendered themselves personally responsible to the proposed teacher is a different question, which it is not necessary now to consider.

The principles herein stated will guide the trustees in contracting with a teacher: Any two of them may fix the time and place of a meeting for the purpose of acting upon this subject, giving the third trustee not less than forty-eight hours' notice of the time and place fixed upon, and the object of the meeting.

They should examine the certificates of such teachers as may be proposed, and receive from them written propositions specifying the period for which they offer to teach, the amount of their salary, and the manner in which they are to be paid; and should make and sign a written memorandum—indorsed upon the written proposition which may be accepted, or repeating it in terms which will identify it—of their action in the premises, filing the same with the district clerk.

This appeal is sustained. Per V. M. Rice, February 23, 1855.

The vote of a district meeting to hire a certain teacher has no legal binding force upon the trustees, even though they may have agreed to abide such result.

A district meeting, by a unanimous vote, selected a teacher, and the trustees had agreed to abide by such a decision; they, however, employed another teacher, and certain of the inhabitants of the district appeal against the proceedings of the trustees.

*Held*, that the agreement by the trustees to abide by the decision of the district was of no legal consequence, as the selection of a teacher belongs to the trustees. This department cannot annul a legal contract with a teacher; it can only be done by some positive violation of duty on his part. Per V. M. Rice, Superintendent, December 9, 1856.

The consent of three trustees, separately given to hire a teacher, does not make a legal contract.

This is an appeal of J. E., one of the trustees, from the act of his associates in hiring a teacher.

There is but one question formally before the department, and that is the legality of hiring the teacher. He was hired, as is customary in school districts, by going from one to another of the trustees, and getting the consent of each to his having the school. This is not a legal proceeding. In a circular issued by the Superintendent May 31, 1853, the following language was used.

"No official act will be regarded by this department as valid, where it is shown that the same was not determined upon by a majority of the board, at a meeting duly called." It was considered that under the law of April 12, 1858, if a district should elect three trustees, it would be because they deemed the action of three men indispensable to the welfare of the district. The assent of each separately taken is not a compliance with the law. I have no choice, therefore, but to say that no legal contract was made with the teacher. Per E. W. Keyes, Deputy Superintendent, March 7 1860.

Two of the trustees cannot hire a teacher without consultation with the third.

This is an appeal from the proceedings of two of the trustees in hiring a teacher.

The difficulty that gives rise to this appeal proceeds directly from the vicious and useless practice of having three trustees to do the business that one could better do alone. Where there are three trustees it is very commonly the practice for two of them to agree upon some teacher who is afterward hired by one of them. Meantime one of the trustees becomes dissatisfied and unites with the third in hiring some other teacher. Of course a conflict of authority arises, the neighborhood is divided and the prosperity of the school is impaired.

The evidence in this case shows that there has never been a meeting and consultation of the three trustees in relation to hiring a teacher at which any agreement has been had. It appears, however, that two of the trustees agreed to hire a certain teacher, but as the assent of the third trustee is nowhere established in such manner as to make the transaction legal, I must hold that the contract entered into cannot be enforced. Per V. M. Rice, Superintendent, April 7, 1862.

Where a teacher has, in good faith, fulfilled a contract to teach, entered into with one trustee, the others not dissenting, the contract will be enforced without regard to irregularities in its inception.

It appears, in this case, that the business of hiring a teacher devolved, by common consent, if not by express direction, upon one of the trustees. He agreed with the teacher to pay her two dollars per week if the number of scholars did not exceed eighteen, and two dollars and twenty-five cents per week if the number was more than eighteen. The number attending was considerably more than eighteen, and the teacher claims the advance wages as agreed upon. The present trustees refuse to allow her more than two dollars per week.

In the opinion of this department, there is nothing to justify any interference with the contract that would not equally justify setting aside the whole proceedings. That there were grave irregularities in the course pursued is apparent, but for these, and the consequences and misapprehensions resulting therefrom, the trustees are alone responsible. They cannot plead their own neglect, nor that of their predecessors, as a sufficient ground for not fulfilling a contract duly executed by the party with whom it was made. The proceedings might be entirely set aside if their legal bearings alone were to be considered, but the teacher would still have a valid claim against the district for services rendered, the amount of which would have to be determined by competent authority, and I cannot think the award would be less than that already agreed upon. In this view of the case, I cannot find sufficient reason for disturbing the contract made by the teacher with the trustee as above stated. She, having fulfilled her engagement in good faith, should not be made to suffer for the neglect of the trustees to proceed in a formal and legal manner. The trustees are, therefore, directed to give the teacher an order for her wages at two dollars and twenty-five cents per week, the amount agreed upon in the contract. Per H. H. Van Dyck, Superintendent, February 16, 1858.



Where one of the trustees is delegated to make known to teachers the conditions of engagement to teach, he acts as agent for the whole board, and the board is bound by the terms of agreement as stated by him and accepted by the teachers.

On an appeal from the action of the trustees in discharging certain teachers from employment before the close of their engagement, the question before the department is whether the act of the trustees in discharging said teachers was or was not in violation of the contract entered into with them.

The following facts are disclosed by the testimony submitted :

1. On the 19th of September, 1861, the trustees, at a meeting duly held, all being present, passed a series of resolutions, to the effect that it was the mind of the board to employ as teachers in the different departments of the district school the appellants in this case, for the term commencing October 1, then ensuing, at wages named in the resolutions, and subject to the condition of a liability to be discharged if they should fail to fill their situations respectively to the satisfaction of the trustees.

2. G., one of the trustees, was formally or informally authorized to contract with the appellants under the authority of said resolutions.

3. The said appellants were employed by the trustee above named, but without any intimation on his part that any such condition as that named in the resolution, relating to the tenure of their term of service being dependent upon giving satisfaction to the trustees, was a part of the contract. Each of the teachers on her part consented to an engagement understood to be for a term of six months, at wages specified, and subject only to the ordinary conditions that attach to any such contract.

4. The appellants entered upon their term of engagement, and discharged their duties to the evident and expressed satisfaction of the trustees until December 10. On that day the trustees adopted resolutions to the effect that the teachers then employed had failed to give satisfaction, and that the school be closed and the teachers discharged on the Friday following, December 13.

5. Notice was given to the appellants respectively of these resolutions, and causes of their discharge duly assigned, and they were directed to leave the school ; but, by the advice of the dissenting trustee, they still continue in possession, and to discharge their duties as heretofore.

The question before the department, as previously stated, relates to the just and legal claim of these teachers for a continuance of their services in said school until the expiration of six months, and for the wages agreed to be paid to them for such term.

In regard to this claim, it must be determined by the principles that govern and control the relations of principal and agent. The said trustee G., in contracting with these teachers, acted as agent for the board of trustees. In considering how far the act of the agent is binding upon the principal we are not to look so much to the actual authority conferred, as to what third parties may reasonably have supposed the agent to be invested with. No principle of law is better established than this, it having been repeatedly affirmed by the highest courts. The teachers had a right to presume that the terms offered to them were authorized by the board of trustees. They assented to no other terms than these, hence were parties to no other contract. They cannot be permitted to suffer from the laches of the board, who permitted them to take their situations without informing them of the terms prescribed by the resolutions.

A contract made with a person authorized to represent the trustees is binding upon them, though contrary to the letter of their instructions. If any damage results to the trustees from this disregard of their instructions, the agent is responsible to them, but the trustees cannot shield themselves from responsibility to the teachers.

The conclusion is, therefore, that the contract with the appellant for a term of six months is valid and binding upon the trustees, and the services of these teachers cannot be discontinued before the expiration of said term.

Appeal sustained. Per E. W. Keyes, Acting Superintendent, January 25, 1862.

Where two trustees, in the temporary absence of the third, hired a teacher, *held*, that the contract was not valid for a longer time than the majority of the trustees saw fit to continue the services of the teacher.

This is the appeal of H. S., a teacher, from the action of the trustees in discharging him from employment as teacher before the expiration of his alleged term of engagement.

The following are the material facts: At the annual district meeting, G. B. was elected trustee for three years.

At this meeting the appellant was present and urged P., one of the trustees holding over, to decide upon his application to teach the school for the ensuing winter term. B., the trustee elected that evening, was then absent from the district and could not be consulted.

Upon the suggestion, however, of the appellant, the two trustees, holding over conferred in regard to hiring the appellant to teach the winter school. The result was that the appellant was employed by them, and he commenced his term of service on the 2d of November following.

On the 15th of February, at a meeting of the trustees, it was resolved to discontinue the services of the said H. S. from that time, one of the trustees dissenting.

The appellant alleges that his contract was for a term of 100 days, and asks to be allowed to complete the full term of his engagement or to receive pay therefor according to the terms of his contract.

It is a principle well established that two trustees cannot act without consulting with the third, or giving him notice of consultation and action. Per E. W. Keyes, Deputy Superintendent, April 26, 1864.

A contract made with a teacher by two of the trustees, without consultation with the third, may be confirmed subsequently by taking the proper legal steps.

Concerning the hiring of a teacher, it is necessary that the trustees meet to call a meeting to act upon the contract. They may pass a resolution confirming the contract already made by two of the trustees, but until such action has been had the contract has no binding validity. Per H. H. Van Dyck, Superintendent, January 9, 1861.

Where an outgoing trustee, in answer to an application of a teacher for the winter school, says that if he had the power to contract he would hire him, it is not a contract, even though the trustee had authority to hire.

The appellant called upon the trustee for the purpose of securing the school for the ensuing term. The trustee was favorable to hiring him, but expressed a doubt as to his having the right to contract with him for a term to commence after his own should expire; but said he would contract with him, if he was assured that he had the legal right to do so. The teacher regards this as a contract, and claims enforcement of it.

The department has ever discountenanced the policy of tying the hands of the trustee newly elected to office, thus making him, or his administration, responsible for a policy initiated by his predecessor. Whatever features of legal construction leading to different conclusions the question may have, the department will leave to the courts to decide.

But that question aside, or even determined according to the construction of the appellant, I cannot find in what transpired between him and the outgoing trustee that which comprises the essential element of a contract. There is, therefore, in my view, no occasion for the interference of this department. Per E. W. Keyes, Deputy Superintendent, December 1, 1859.

Under certain circumstances, the action of one of two trustees in hiring a teacher will be sustained.

This is an appeal from the action of one of the trustees in hiring a teacher.

There are but two legal trustees in the district, and they are unable to agree in the matter of hiring a teacher. N. G., one of the trustees, gave notice to G. K., the other trustee, of a meeting of the two to act upon the question.

but the said G. K. neglected to attend. Thereupon, the other trustee took the responsibility and hired a teacher, and, from his action, this appeal is brought.

The hiring of this teacher, though irregular, appears to meet the approval of a great majority of the patrons of the school; and, this being the case, and the proceeding, at the time, being demanded as the only practical mode of extricating the district from its embarrassment and having a school, the same is hereby approved, and the appeal is dismissed. Per H. H. Van Dyck Superintendent, February 14, 1861.

Trustees have no right to employ teachers related to them within two degrees, except by consent of two-thirds of the legal voters of the district.

By a reference to section 9, chapter 647, Laws of 1865, you will see that a trustee has no right to employ his son-in-law to teach the district school, except he has consent of two-thirds of the legal voters present at any annual or special meeting voting on the subject. A son-in-law is by marriage related in the first degree. Per S. D. Barr, Deputy Superintendent, October 26, 1865. (*Letters*, vol. 4, p. 409.)

The approval of hiring certain relations for teachers must be had by a two-thirds vote at a district meeting.

Under the statute of 1864, the approval of a majority of the inhabitants (voters) of a school district, in my judgment, corrects the disability of relationship in the hiring of a teacher, and it cannot affect the question that such approval is given at any time subsequent to such hiring.

The law has been amended now, so that in future such approval must be had by a two-thirds vote, at a district meeting. Per V. M. Rice, Superintendent, May 8, 1865. (*Letters*, vol. 4, p. 67.)

Trustees of union free schools may hire teachers related to them within two degrees.

It has been held by the Superintendent that the provision of the general school law prohibiting trustees from employing teachers who are related to them within two degrees, without first obtaining the consent of two-thirds of the inhabitants, does not apply to union free schools, or to schools under special act of the Legislature. The general rule governing such cases is, that when the special or union free school act is silent upon a given question, then the provisions of the general act will apply, unless they are incompatible with the provisions of the special or free school acts. The restriction contained in the general act in regard to the hiring of teachers, if it applied to all union free school districts and to districts under special acts, would frequently cause these districts much trouble, for these reasons:

1. The board of education consists usually of not less than nine members, and therefore under such a restriction a much larger class of teachers would be excluded than in ordinary districts;

2. These districts are usually much larger and more populous than ordinary school districts, many of them having a population of over ten thousand inhabitants, and it would be therefore a great hardship, if not impossibility, to call a special meeting of the inhabitants to legalize the hiring of one of the relatives of a trustee, as provided in the general act.

For these reasons, as well as others that might be mentioned, I uniformly hold that the provisions of the general school act before referred to do not apply to such districts as are organized under special act, or as union free schools. Per V. M. Rice, Superintendent, July 11, 1866. (*Letters*, vol. 5, p. 506.)

Uncles and cousins of any person are not related to him in the second degree.

Neither uncles nor cousins of any person are related to him in the second degree, according to the consanguinity tables in use in this State. Within the second degree are included fathers and mothers, sons and daughters, brothers and sisters, both by blood and marriage. Per V. M. Rice, Superintendent, January 11, 1866. (*Letters*, vol. 5, p. 54.)

Trustees cannot offset against the wages of a teacher a note of his which they or either of them have purchased.

The appellant alleges that the trustees offer, in part discharge of the wages due him as teacher in the district, two notes given by him to other parties, and purchased by them.

The only question is: Are these notes a valid and legal tender to the teacher in liquidation of his claim? I must answer, they are not. The district owes the teacher a certain sum. That sum he is entitled to collect; and it cannot be offset by any claims, however valid and just, of third parties. The trustees hold those notes only in their individual capacity; they owe the teacher only as agents of the district, and they cannot offset their private claims against the debts owing by them in their fiduciary capacity. Were the teacher to sue the trustees for the balance of his wages, no court would allow these notes as an offset for any part of his claim. Per H. H. Van Dyck, Superintendent, June 6, 1860.

If a teacher engages to teach by the month, the legal holidays will be allowed him. Three months from December 5, 1864, extend to and include March 4, 1865.

From December 5, 1864, for the next three months, there are only three legal holidays, Christmas, New Year's and Washington's birthday, and such school holidays as custom or express agreement has sanctioned in the district, together with any thanksgiving or fast days occurring within the term and appointed by the President or Governor.

If the teacher keeps the school open on a holiday, he is not entitled to have such day's service counted in lieu of another day not a holiday, except by agreement with the trustees.

The statute provides, section 7, article 1, title 3, chapter 555, Laws of 1864 that a deficiency, of not more than three weeks in the twenty-eight weeks required by law for the school year, shall be excused when such deficiency was caused by the attendance of the teacher at an institute during his term. The trustees may allow the teacher the time or not, as they shall elect. Per V. M. Rice, Superintendent, March 15, 1865. (*Letters*, vol. 3, p. 703.)

The word "month," in law, means a calendar month of thirty days.

The word "month," in law, means a calendar month of thirty days. I cannot tell you the number of days in a school month. If we accept this, "from a given day in one month to the same day in the following month is a month," then the month will vary as to the number of days for school according to the number of Sundays, legal holidays and Saturdays allowed to the teacher. Per E. W. Keyes, Deputy Superintendent, April 13, 1865. (*Letters*, vol. 4, p. 32.)

Discharge of a teacher before the expiration of his term—when justifiable.

A teacher appeals from the action of the trustees in discharging him from school before the close of the term of his engagement.

A contract with a teacher, without expressed conditions, is to be interpreted by the conditions implied in the very nature of the contract, and the purposes for which it is entered into. Every such contract implies distinctly that the teacher employed possesses the essentials of moral character, learning, ability and will. The license which he holds from the proper officer is *prima facie* evidence, only, that the applicant possesses these requisites, but it is not conclusive; the presumption raised by it may be rebutted by direct evidence, tending to show that the holder of such license lacks any or all of these qualifications. The question now raised is upon the proceedings to be had, in order legally to effect a dissolution of a contract made with a teacher found or believed to be destitute of any of the essential qualifications for his position. The manner of proceeding upon an application to the proper authority for an annulment of the license held by the teacher is set forth with sufficient clearness in another part of the Code of Public Instruction. The annulment of the

license dissolves all contracts entered into by virtue of its sanction. But can the fulfillment of a contract be avoided only in this way? Until the license is revoked, are the trustees bound to retain a teacher obnoxious to the district through immorality, ignorance, or inefficiency? The affirmative of this is a too popular fallacy. The admission of it would be a subversion of the principles already enunciated as pertaining to the essential nature of the contract. It cannot be supposed that in case a charge of gross immorality, specifically urged, carrying with it a strong presumption of its truth, were brought against a teacher, the trustees must wait for the tedious delay of a formal hearing in the case before a commissioner, and abide the event, which may be determined through inefficiency of evidence, while the moral conviction of the truth of the charges preferred is still strong and abiding. The presence among pupils of a teacher against whom such suspicions rest must of itself, from the suggestions to which it would give rise, promote conditions of mind opposed to the development of virtue and purity of heart. This consideration alone would justify the trustees in a summary dismissal of the teacher. This, to be sure, is an extreme case, but it is sufficient to illustrate and to establish the principle advanced, that the trustees may be justified in the discharge of a teacher before the close of the term specified in his contract. In determining what constitutes such justification, it is difficult, not to say impossible, to establish uniform rules. The decision as to the propriety of the act, and the power to perform it, rests with the trustees. For an abuse of their discretion, or an unwarrantable exercise of their authority, they are, of course, responsible. On the complaint of the party sustaining what he considers a grievance or wrong, the issue becomes one of fact, and it devolves upon the trustees to show by evidence that the teacher lacked the character, the ability, or the will, essential to a proper discharge of his duties, and that he failed thus to fulfill the obviously implied conditions of his contract. The mere fact of dissatisfaction on their part, or that of the inhabitants, is not sufficient to justify the discharge of a teacher employed for a definite period.

The tribunal before whom the action is brought, as the court, a jury, or this department, are the constituted judges of fact, and will determine, from the evidence presented, whether the incompetence of the teacher, as resulting from ignorance or indifference, is fully proved, and hence his discharge, upon the grounds of a violated contract, clearly justified.

In the present case, the trustees offer evidence bearing upon the management and general deportment of the appellant in the school-room, and in his intercourse with the pupils, tending to show disregard to the proprieties and courtesies incident to his responsible position. Trifling and irrelevant conversation oft indulged and long continued with the pupils in school hours; prying and impertinent questions in regard to domestic affairs; low, and, at the least, suggestively vulgar, remarks to the older female pupils; rude, boisterous and harsh language as a means of, or substitute for, discipline, are alleged and proved by the testimony of his pupils with a circumstantial minuteness that requires emphatic denial or plausible explanation to invalidate or palliate. The vague declaration concerning the colorable nature of the testimony, and the affidavits relative to the satisfaction uniformly attending his engagements as a teacher heretofore in the same vicinity, which are introduced by the appellant, are insufficient to rebut the presumption, raised by the evidence submitted to the trustees, that they were justified in their dismissal of the appellant.

I must, therefore, hold that the trustees proceeded with full and sufficient justification, and decline to interfere with their action. Per H. H. Van Dyck, Superintendent, April 13, 1858.

Where a teacher leaves a school voluntarily before the close of the term for which she was engaged, even at the request of the trustees, she can recover wages only for the time actually taught.

This is an appeal from the refusal of the trustees to pay the full amount of wages claimed for services as teacher.

The appellant alleges that she was hired for a term of two months, at three dollars per week, and that at the end of four weeks she was discharged from said school, or was compelled to leave, and she now asks that the trustees be directed to pay her wages for the full term.

I think the appellant fails to prove that she was discharged; or was under any moral or physical compulsion to leave. The trustees desired her to leave, and so expressed themselves to her. But she was unwilling, and they did not insist. She afterward determined to leave, and sent for one of the trustees to take her home. This action on the part of the trustees cannot be considered as a breach of the contract. Her yielding to their suggestion to abandon the school was not compulsory. The trustees must pay the teacher for the time she taught, and she must be content with that. Per E. W. Keyes, Deputy Superintendent, April 27, 1860.

Dismissal of a teacher before the expiration of his term of engagement.

On the appeal of J. A., a teacher, from the action of the trustees in discharging him before the expiration of the term for which he was engaged, it appears that Mr. A. was engaged to teach the school for four months, for the sum of \$60, and that after teaching two months and nine days he was discharged. Also that he has been ready at all times to fulfill his contract, but has been prevented from so doing by the trustees. The trustees justify their action upon the ground of the incompetency of the appellant.

The incompetency of the appellant I do not think so conclusively proved as to sustain the presumption of a non-fulfillment of contract by him, though from the testimony on both sides I am disposed to rate him considerably below the grade of a first-class teacher. Still, the trustees can hardly expect to get all the manly and scholarly virtues for \$15 per month. They paid him just average wages, and I should infer from the testimony that he taught just about an average school.

I cannot, therefore, find sufficient justification for the discharge of the appellant, and must declare my conviction that he is entitled to the sixty dollars agreed to be paid. Per H. H. Van Dyck, Superintendent, March 13, 1860.

Where a teacher is engaged with the understanding that she may be discharged at the end of one month if her teaching is unsatisfactory, it will be implied that the engagement is for the ordinary term, and, if no dissatisfaction is expressed at the end of the month, she cannot be discharged subsequently to that time.

Both parties concur in the statement that the positive engagement was for one month only, during which time the trustees were to determine whether to continue her or not. The appellant avers and the respondents deny an agreement to retain her three months longer if she gave satisfaction during the first month. No dissatisfaction was expressed, however, till some time after the expiration of the month, when the trustees discharged her.

*Held*, that the fact of their reserving a month in which to observe the success of the teacher implied the expectation, on the part of the trustees, of retaining her for the ordinary summer term if her teaching was satisfactory. Upon this expectation she would naturally rely in the absence of any notice to close school at the end of the first month. They did agree to determine upon her qualifications during the first month, and they could not, without an arrangement with her to that effect, prolong the period of their observations indefinitely, and discharge her at their discretion. A month is certainly long enough to test a teacher's ability, and the trustees were bound in good faith to give their decision at that time.

In the present case the action of the trustees was wrong, and they are directed to reinstate the teacher until she shall have completed the ordinary summer term of four months. Per H. H. Van Dyck, Superintendent, August 17, 1857.

Where a teacher after teaching three days of his term found the school-house locked against him, and without applying to the trustee he left and made no demand for opportunity to continue his school until fifteen days afterward, *held*, that he had abandoned the contract voluntarily.

This is an appeal from the refusal of the trustee to carry out a contract made by a former trustee with the appellant.

The appellant fails to establish that the contract was first violated by the trustee. He admits that he was suffered to occupy the school-house for three days, and that then the door was locked against him. He does not say by whom this was done, and admits that the first demand he made upon the trustee for opportunity to continue his school was fifteen days after the time at which he alleges the door was closed against him. There is no evidence produced by him that he sought any opportunity to continue his engagement, or made any demand for such opportunity, prior to the expiration of fifteen days. This I think effectually concludes the case against him. By all ordinary construction and usage I think this must be regarded as an abandonment of the contract on his part, which left the district to enter into another engagement. Per H. H. Van Dyck, Superintendent, March 30, 1861.

Difference of opinion between the teacher and the trustee concerning the proper discipline of the school does not justify the removal of the former before the expiration of his term.

This is an appeal from the action of the sole trustee, in discharging the teacher before the expiration of his term of engagement. The justification set up by the trustee for the discharge of the teacher is that there was some difficulty in the school upon matters of discipline; that the trustee and the inhabitants desired the teacher to alter his rules of discipline, which he refused to do, and was consequently discharged.

The justification is insufficient, or rather what is alleged as justification is no justification at all. Even granting the teacher was indiscreet and impolitic in his management, it does not afford justification for discharge. There has been no such departure from propriety as to constitute any violation of the contract on his part, and so long as this was the case the district was bound by the agreement. Appeal sustained. Per E. W. Keyes, Deputy Superintendent, April 28, 1863.

Where a teacher leaves his school before his term of engagement is concluded, because the trustees will not sustain him in the enforcement of reasonable rules, he is entitled to wages for the time taught.

On an appeal of the teacher from the refusal of the trustees to pay him the sum of thirty dollars and sixty-six cents, earned by him as teacher of the district school, it appears that he had been hired for the term of three months, by the trustees, at the rate of sixteen dollars per month. It further appears that one of the pupils was guilty of insubordination, in openly and flagrantly disobeying the orders of the teacher, and he being a large, stout lad, the teacher wished to avoid personal conflict with him, and so called upon the trustees to interfere, and assist him in securing obedience. But they refused to give him any assistance; and he, deeming his services under such a condition of things of no value to the district, left the school.

I cannot but think the trustees erred in their estimate of their powers and duties, in this case. The teacher is held responsible for the educational development of his pupils, and he is, therefore, entitled to the aid and support of the trustees in carrying out all reasonable and judicious plans for the promotion of this object. When, therefore, the trustees refused to sustain the teacher in his requirements, he could not but see that his plans for the educational development of his pupils were frustrated, and his usefulness, to a great extent, destroyed.

The provocation to leave was serious, and I believe the act justifiable. It certainly is not just, whatever be the technicalities of law in the case, to deprive the teacher of wages for services actually rendered. Only under

circumstances of aggravated injury to the district should the trustees be willing to take any mean advantage of technical construction, and deprive the teacher of wages honestly and faithfully earned.

Under the circumstances, therefore, it is my judgment that the appellant is entitled to the sum claimed by him. Per H. H. Van Dyck, Superintendent, July 25, 1859.

A teacher who closes his school upon other than legally authorized days for closing, without the consent of the trustees, abandons his contract and is liable to be superseded.

This is an appeal of V. H., a teacher, from the action of the sole trustee in discharging him from the school before the term of his contract had expired.

On a careful examination of the statements I discover two facts, viz., that the appellant dismissed his school on Tuesday, January 24th, 1860, for the rest of the week, without permission from the trustee, but rather in opposition to his expressed wishes, and that on Thursday, January 26th, the trustee discharged him from the remainder of his engagement.

Among the clearly implied conditions of every contract to teach is this one, that the school shall be regularly taught from the beginning of the term until its close. The teacher cannot, therefore, close his school except upon the regularly appointed days, unless with the approval of the trustee. In doing so he renders himself liable to the charge of abandoning the contract, and the trustee has the legal right to regard the contract as concluded. Per H. H. Van Dyck, Superintendent, March 21, 1860.

A teacher who closes his school for any time other than the legal holidays or Saturdays allowed him, without the consent of the trustees, abandons his contract and forfeits the balance of his engagement.

On an appeal from the action of the trustees, in discharging a teacher before his term of service had expired, it appears that the appellant was hired to teach the school during the winter term of three and one half months, and that he commenced his term November 17, and taught till December 24. He then closed his school for a vacation during the holidays, giving notice that school would commence again January 5. This vacation was not provided for in his contract with the trustees, nor were they consulted concerning it, or even notified by the teacher of his intention in regard to it. On returning to the district to resume his labors, he was informed by the trustees that his services were no longer required, and from this decision he brings an appeal.

The appellant, by his own showing, has abandoned his contract, and forfeited all rights under and by virtue of it, by closing his school without permission first obtained from the trustees. The teacher who closes his school for a single day not recognized as his by the statute or in his agreement, without the consent of the trustees, does so at his peril, for in such case the trustees may regard the contract as terminated, and employ another teacher. Appeal dismissed. Per V. M. Rice, Superintendent, March 27, 1863.

A candidate for a teacher's certificate should be examined as to learning, morals and ability to teach.

When a candidate is refused a certificate on the alleged ground of "feelings of dissatisfaction on the part of some of the patrons of the school," a new examination will be ordered.

The town superintendent of Burns, Allegany county, refused Miss Jane E. Gilbert a certificate of qualification as a teacher, from which refusal she appealed.

The evidence in this case renders it exceedingly difficult to ascertain precisely upon what grounds Miss Gilbert was refused a certificate. It tends to show that the superintendent expressed himself satisfied with her education and literary acquirements. If he entertained doubts as to her capacity to impart instruction, the testimony fails to show that he took proper measures, by visiting her school or otherwise, to arrive at an intelligent conclusion on this point. In a letter to her, he referred to "feelings of dissatisfaction on



the part of the patrons of the school" as having been considered by him in arriving at his determination to withhold a certificate. Such feelings or opinions were no proper guide to the superintendent, and should have had no other effect than to induce greater care to examine the foundation of them for himself, and decide upon his own knowledge and responsibility. Their existence may be a proper element of consideration, in determining the trustees of a particular district to forego the services of a qualified teacher, but they are no test of competency, and should not have the effect (as they do, if adopted by the superintendent) of excluding a teacher from every district in the town. It follows that no good reason has been shown on the part of the superintendent for withholding the certificate. On the other hand, it is possible that his conclusion is correct, although founded upon insufficient evidence; and there is not such affirmative testimony of Miss Gilbert's entire fitness to teach, before the department, as to warrant it in ordering the superintendent to certify to her qualifications. To justify this, it should have such knowledge as would induce the State Superintendent himself to grant a certificate.

The appeal can be sustained only so far as to relieve Miss Gilbert from the imputation that a valid judgment has been passed against her qualifications. Perhaps this condition of things should be satisfactory, as she is entitled, of course, to an examination in any other town where she may be a candidate for employment as an instructress. If, however, she is still desirous to act as a teacher in the town of Burns, she may present herself for examination before Wm. W. Payne, late town superintendent of Burns, Samuel W. Swaine, of Swainsville, and any other of the former superintendents of Burns whom those gentlemen (who are hereby requested to act in the premises) may select. They will, in case of their acceptance of this commission, appoint a time and place for such examination, and cause reasonable notice thereof to be given to Mr. Whitney, that he may attend the same, if so disposed. All further directions are reserved until the coming in of the report of such committee, or further order. Per V. M. Rice, December 7, 1855.

The infliction upon a pupil of unnecessary and cruel punishment is good cause for annulling a teacher's certificate.

A teacher, for an act of disobedience, ordered a boy, fifteen years of age, to hold out a book, of the ordinary size used in schools, at arm's length, level with his shoulder. The boy, after holding it in that position from five to eight or ten minutes, let it fall and said he could not hold it any longer. On being ordered to hold it out again, he peremptorily refused. The teacher, then, with a curled maple rule, over twenty inches long, one and three-quarters wide, and half an inch thick, struck him from fifteen to twenty blows on his back and thighs, and in so severe a manner as to disable him from leaving school without assistance. A physician was called and found his back and limbs badly bruised and swollen. The teacher on the succeeding day sent to him a physician, who pronounced him "very badly bruised." It was ten or twelve days before he so far recovered as to be able to attend school.

The Superintendent expresses his unqualified disapprobation of a punishment so severe and unreasonable. If the disobedience of the boy had been the result of sheer obstinacy and willfulness, it could not justify the infliction of fifteen or twenty blows with such a bludgeon, upon the back and limbs of the boy, disabling him for a fortnight. Such a measure of punishment for such an offense would be sufficient ground for annulling a certificate. Per Young, March 29, 1843.

The department will annul the certificate of a teacher for cruel and unreasonable discipline in the government of a school.

Mr. Bly was employed as a teacher in district No. 7, Amity, by the trustees, on the 4th of December last, and soon afterward commenced his school, under a certificate of qualification granted by the town superintendent. From the

statement of the respondents, in answer to the appeal, it appears "that much dissatisfaction prevailed in the district, on account of the severe, not to say outrageous, manner pursued by the teacher in punishing the scholars." And on a visitation of the school on the day above referred to by the town and county superintendent, but twenty-eight out of fifty-eight children on the teacher's list were present. "The great part of the absentees, Bly acknowledged, had been driven from the school in consequence of his severity, etc. He also remarked to us, that 'if he could get rid of a few more, he thought he could govern the rest.'"

The respondents further state, during the examination "the greatest confusion, insubordination and anarchy continued;" that the teacher was informed at the close, and after the children had left, in the most kind and friendly manner, that some method better calculated to preserve order in his school must be adopted, and he was advised to "address his pupils in a spirit of kindness, etc.," at which he evinced great anger, announced his intention "to adopt and persist in his own course, and to receive dictation from no man." The superintendents then informed him that in their judgment the indiscriminate use of the rod was improper, that the "insubordinate conduct of his pupils was in a measure owing to his indiscriminate and severe use, not of a rod, but of a bush about three-quarters of an inch in diameter, and three feet long, with several branches well twisted together," and that unless a reformation in this respect was promised, they should be under the necessity of depriving him of his certificate.

This he peremptorily refused to do, and distinctly informed the superintendents that he should continue the same course of discipline he had adopted for the government of his school. Under these circumstances, they deemed it their duty to annul his certificate.

The practice of inflicting corporeal punishment upon scholars, in any case whatever, observes General Dix, has no sanction but usage. The Superintendent is not prepared in the present imperfect condition of educational science entirely to prohibit its use as a means of school discipline, but he will sustain town and county superintendents in every effort to restrict it to the smallest possible compass consistent with the preservation of order and government, and he will in no case tolerate the slightest abuse in the discretion conferred in this respect by usage, or otherwise, upon teachers.

In this case the town and county superintendents were amply justifiable in annulling the certificate, and their proceedings are therefore confirmed, and the appeal dismissed. Per S. Young, February 1, 1844.

A teacher's certificate of qualification cannot be annulled without giving him notice and a reasonable opportunity, if he desire, to appear and be heard in defense.

The trustees of district No. 5, in Guilford, employed Mr. Matteson to teach their school for the winter term. The school commenced November 1, 1847. November 26, 1847, Mr. Carhart visited the school, examined Mr. Matteson and gave him a certificate. December 6, the superintendent stopped at the door of the school-house and told the teacher that complaints had reached his ears in regard to his mode of punishing scholars, and intimated that his certificate might be annulled. December 20, the superintendent served a notice upon the teacher that he should annul his certificate unless certain complaints "arising from his mode of punishment" were cleared up. December 25, the teacher wrote the superintendent, requesting an investigation of the charges and complaints against him. January 5, the superintendent annulled the certificate, and gave notice thereof to the trustees, without having given the teacher any opportunity to reply to or explain the charges made against him, and assigning, as his reasons therefor, the complaints mentioned in his previous notice and his own observations. The trustees all signed a paper, stating that, in their opinion, the charges against the teacher were of a trivial character and wholly unfounded, and that the course of the superintendent was "under

handed, prejudiced and ungentlemanly," and "meets our unqualified disapprobation."

The conduct of the town superintendent in this case will hardly admit of a reasonable explanation. He visits a school twice, and then gives a teacher a legal certificate. In less than a month he gives the teacher notice of his intention to annul his certificate, without having, in the mean time, visited the school or required a re-examination, and upon complaints not stated in writing or assuming any tangible shape, but, so far as appears at the time, mere hearsay reports and neighborhood gossip. The pretense that the superintendent had become satisfied, from "personal observations," that the teacher was unqualified, is very strangely inconsistent with the fact that he made no "personal observations" after granting the certificate. The teacher requested specifications of the charges. None were given. He desired to be heard in answer to whatever could be alleged against him. No opportunity was allowed.

A certificate of qualification should not be annulled without a statement of the complaint, and an investigation of its truth, and an opportunity given to the teacher to be present during such investigation. Such are the rules prescribed by this department in proceedings to annul a teacher's certificate, and they are a part of the law. The superintendent proceeded in this matter without a proper and needful statement of the charges and specifications, and without giving the teacher an opportunity to be heard in defense.

It is, therefore, decreed that the order of the town superintendent, annulling Mr. Matteson's certificate, be set aside. Per Morgan, February, 1848.

#### Refusal to annul teachers' certificate for inflicting proper punishment.

On a petition asking this department to annul the license of A. B., a teacher, it is alleged that the said A. B. inflicted cruel and unusual punishment upon a pupil.

The severity of the punishment is conceded, but not to the extent nor in the manner charged. The facts appear to be that the pupil flatly refused to obey the teacher, by not taking the seat he was directed to take. The teacher came toward the boy, intending to compel him by force to take the seat assigned to him. The boy, with an oath, bade the teacher not come near him, and, as the teacher approached, the boy struck at him several times. The teacher caught the boy, and with force put him in his seat, the boy meantime kicking, striking, yelling and swearing. To stop this outrageous and unseemly noise, the teacher took the most effectual means at his command; he intercepted the passage of air between the lungs and the vocal organs, long enough to suppress the disturbance, but not long enough to injure the boy. But the boy was not subdued by any such gentle restraint, for no sooner was he left alone than he ran out of doors. The teacher pursued and caught him, and brought him back to the school-room, not, it appears, without some considerable force, for the boy resisted with all his strength; and it would really not be strange if in the struggle he received some severe blows.

And for this the Superintendent is asked to annul the certificate of the teacher.

I decline to do any thing of the kind. The teacher, in the matter of the boy, did no more than he was compelled to do; he might have done much more, and still be acquitted of inflicting cruel and unusual punishment. It was not cruel, and if it was unusual it was only so because the conduct of the boy was unusual. Petition denied. Per V. M. Rice, Superintendent, March 24, 1862.

Annulment of a teacher's license for incompetence known to the commissioner does not require legal notice.

The annulment of a license for inability, found to exist on a personal examination by the commissioner, requires no notice at all, and for the obvious reason that testimony is not available to discredit the deliberate judgment of the commissioner, founded upon his own personal knowledge. Per V. M. Rice, Superintendent, March 12, 1863.

A teacher's license should be annulled for intemperance.

It must be borne in mind that, in the matter of the character of a teacher of youth, the commissioner or other competent authority bases his certificate upon the assurance that the applicant is of good moral character. Were the schools throughout the State accessible to and in charge of teachers guilty of the habit of drunkenness, it would present a spectacle at which the moral sense of the people would stand appalled. I could never grant a certificate to such a person, setting forth, among other things, that he was qualified in respect to moral character to teach any district school, and if, unwittingly, I had given him such a testimonial, I should be compelled, upon evidence of his immoral practices being submitted, to retract a statement so clearly at variance with the facts disclosed; the only practical mode of doing which would be to annul the certificate which he held. Per H. H. Van Dyck, Superintendent, February 7, 1860.

A commissioner cannot withhold a certificate from a teacher with whose character, learning, and abilities he is satisfied, on the ground that said teacher is employed in a district against the feelings or prejudices of the inhabitants.

On an appeal of the trustees from the refusal of the commissioner to grant a certificate to the teacher whom they had employed to teach the school in their district, it is established that, at the examination of said teacher, the commissioner found no fault with her qualifications in respect to moral character, learning and ability, but declined to give her a certificate upon the ground that she was a resident of the district in which she proposed to teach, and that there had been and still was much opposition to her teaching said school, and that he had pledged himself not to give a certificate to any person whose presence in the school would be objectionable to any considerable number of the inhabitants.

The motives of the commissioner in seeking to prevent the occasion of strife and contention in the district are worthy; and the means, if they were within the legal authority of that officer, would be justifiable. I cannot, however, deem the discretion of the commissioner in this instance legally exercised. His discretion in licensing a teacher extends only to determining upon the qualifications required by the law, and when these requirements are fulfilled he has no right to impose other conditions.

After the qualifications in respect to moral character, learning, and abilities, have been certified, the trustees alone are vested with the discretion of selecting or rejecting an applicant upon the ground of personal or local considerations. Per H. H. Van Dyck, Superintendent, May 23, 1859.

A commissioner is justified in withholding a certificate from a teacher where evidences of his good character do not affirmatively appear.

The basis of every certificate issued by the commissioner is his satisfaction concerning the qualifications of the applicant in respect to moral character, learning and ability. Under certain circumstances the commissioner has the right to presume that the moral character of the applicant is unimpeachable, but he may withhold the certificate until the applicant shows affirmatively that he possesses good moral character.

It must be borne in mind that the commissioner is the servant of the people, pledged to protect their interests and rights in matters relating to the education of their children, and he has no right to peril those interests by legalizing the presence and labors among them of a person concerning whose moral reputation there is a doubt. Per E. W. Keyes, Deputy Superintendent, May 20, 1859.

A teacher who goes into school without being duly qualified according to law violates his contract, and the same is not renewed by his obtaining a certificate subsequently, unless a new contract is made.

This is an appeal from the action of the trustee in discharging a teacher before the expiration of his alleged term of engagement.

The appellant's own admissions condemn him. He entered the school and taught nearly three weeks without any certificate. This was wholly unauthorized. He was liable to discharge at any moment of the time. He had violated his own contract. The trustee had no authority to authorize him to continue the school without a license. The original contract was annulled by the appellant when he went into the school without a license, and was not renewed by his obtaining a license subsequently. Per V. M. Rice, Superintendent, March 14, 1864.

Holders of State certificates are not exempted from examinations, by school commissioners or city superintendents, in the places where they seek situations as teachers.

A State certificate does not of course authorize the holder to demand employment of right, from any school officer, or board of officers. These have the right to demand just such evidence of qualification as they deem proper. Hence they may say to any applicant for a position who holds a State certificate, "We will employ you if you can procure a certificate from the local commissioner or from the city superintendent." If he refuse to comply, of course they may refuse to employ him. Hence it follows that the board of education in the city of New York may prescribe such conditions of qualification as they see fit as a precedent condition to employment. If they require examination by the city superintendent, the teacher has no alternative but to comply. The holder of a State certificate is supposed to be so thoroughly qualified in all respects that he is ready to pass an examination at any time. He should seek, rather than avoid, the application of the several tests that can be applied to his character and scholarship. Per V. M. Rice, Superintendent, April 13, 1864. (*Letters*, vol. 3, p. 98.)

Teachers' institute a training school for teachers. Prominent object, organization, government, discipline and instruction of common district schools. Superintendent opposed to paying large sums of money to lecturers.

The Superintendent directs me to say that a teachers' institute should be a training school for teachers, and while good, thorough elementary instruction in the branches to be taught in common schools should be imparted, still the great object of the institute should be kept prominently before the instructors and the teachers in attendance, viz., practical instruction in regard to the organization, government, discipline and instruction of common district schools. The money furnished by the State, to aid in defraying the expenses of organizing and holding teachers' institutes, should be paid so far as practicable toward the support of institutes conducted as above stated.

The Superintendent is, therefore, strongly opposed to paying large sums of money for lecturers. You will consequently bear this fact in mind in making arrangements with lecturers. Do not engage many lecturers, nor agree to pay them much money; the evenings may some of them be very properly spent in the discussion of topics of practical interest, and in other exercises in which the teachers shall be called upon to do something. We wish teachers who not only know a great deal, but those who can do much in the school-room and do it well. Per S. D. Barr, Deputy Superintendent, October 26, 1865. (*Letters*, vol. 4, p. 410.)

The teacher is legally responsible for the safe keeping of the school register, and if it is lost or stolen through his carelessness he cannot receive any pay for his services. But if he can make oath that it was correctly kept, and not lost or stolen by any fault of his, the trustees may give him an order upon the supervisor for his wages.

The teacher is legally responsible for the safe keeping of the school register, and if he by carelessness leaves the register in the school-house, and not under lock and key, he must suffer the consequences. In short, the teacher must show that he has used due diligence in taking care of the register, or, in other words, that its loss was no fault of his, before he is entitled to any pay for his services. If he can make oath that the register was correctly kept, and that he cannot produce it because it is lost or stolen without any fault of

his, the trustee would be justified in giving him an order upon the supervisor for his wages. The trustees should at once supply the teacher with a new register and cause it to be carefully kept for the remainder of the school year. If the trustees make application in season, I have authority to authorize the commissioner, in his apportionment of 1867, to make to their district an equitable apportionment, although their record of attendance for the time school has been taught during the present school year is stolen or missing. Per V. M. Rice, Superintendent, March 19, 1866. (*Letters*, vol. 5, p. 216.)

Town superintendents (supervisors) can use no discretion in the matter of paying over public money on the order of the trustees.

Town superintendents are by law required to pay over the library money apportioned to the several districts, to, or on the order of, the trustees of such districts respectively. The question of the legal or illegal expenditure of such money can only arise on the apportionment, and must be determined from the annual report of the trustees for the year preceding such apportionment. Where, therefore, an order of the trustees, legal on its face, is presented to the town superintendent (supervisor) for the payment of the whole or any portion of the library money of any district, he has no other alternative than to pay it, unless he knows, or has good reason to suspect, it has been wrongfully procured, and even then he refuses payment on his own responsibility should the order prove to be genuine and valid.

It is true, trustees of districts have no legal authority to apply the library money to the purchase of maps, globes, or other scientific apparatus, without a vote of the district to that effect, but this is a matter with which the town superintendent (supervisor) has nothing to do. The trustees are responsible for the proper performance of their duty only to their district, their successors in office, and the Department of Public Instruction; and if, without a vote of the district, they give an order for the library money on purchasing apparatus, etc., such an order is valid, and the town superintendent (supervisor) cannot go behind it in search of the authority under which it was given. The designation of a portion of such money as interest does not affect the right of the holder of the order to receive payment; and, if the supervisor has not funds of the district in his hands to an amount sufficient to meet the order, he may indorse the amount paid on the order, or take a receipt for the same. Per V. M. Rice, Superintendent, May 19, 1854. (*Letters*, vol. 1, p. 106.)

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## TRUSTEES.

An arbitration between the trustees of a school district and a person having a claim against it is proper and legal, and the award binding on the parties. Per Morgan, February 19, 1848.

A school district cannot by vote authorize trustees to borrow money on its credit. If the trustees advance money to purchase a library, they may repay themselves out of money voted by tax for that purpose, or received from the State, but they cannot charge interest. Per Spencer, March 29, 1839.

Trustees are not empowered to receive a note in payment of a tax imposed by them, and cannot maintain an action to enforce payment.

The trustees of district No. 8, in the town of Mentz, took a note from S. P. Clark in payment of a tax assessed upon his farm. Upon appeal it appeared that Mr. Clark had been erroneously taxed in district No. 8, while he was yet a resident of district No. 7. *Held*, that the note was void, and could not be collected, even if the tax had been legally assessed. Per Spencer, March 24, 1840.

When costs have been incurred against district officers in suits by or against them in the discharge of their official duties, a majority of the voters of the district may allow the amount, and the trustees assess the same by tax.

The inhabitants of district No. 4, on the 4th September last, audited the account of the trustees for costs and expenses incurred in certain suits commenced by and against them and their predecessors in office, and directed the amount so audited and allowed to be collected by a tax. The Superintendent, on a careful examination of this case, is satisfied that the account was made out and presented in good faith, that the items were such as the district were fully competent to pass upon, and that the tax directed to be levied for their payment was equitable and just. (8 *Howard's Reports*, 125.) Per Morgan, October, 1849.

The inhabitants of a school district have no power to direct the trustees to levy a tax to pay the expenses of an arbitration in settling difficulties in a district.

The decision of the county superintendent, declaring that the inhabitants of district No. 13, in voting a tax to defray or reimburse the expenses of an arbitration, and other liabilities which had accrued in settling the difficulties to which the district had been exposed for the past nine months, had transcended the powers conferred on them by law, is strictly in accordance with the previous adjudications of this department, and with the well settled principles by which it has been uniformly governed in the disposition of cases of this nature, and must accordingly be affirmed. The law has distinctly defined the purposes for which a school district tax may be voted; and the inhabitants can in no case go beyond them. That the expenses for which the tax in this case was imposed were incurred by the trustees, under the sanction and directions of a district meeting, cannot affect the principle; the district had no legal authority to pass such a vote, and it was in no sense obligatory either upon the inhabitants or trustees. The only mode by which the trustees can be indemnified for the expenditures incurred by them is by voluntary contribution. They cannot legally enforce the collection of a district tax for this purpose. Per Young, September 12, 1843.

Inhabitants have no right to re-elect against his will a person whose resignation has been accepted.

Daniel Lawrence, whose resignation of the office of trustee of district No. 2, Hamburgh, had been accepted by three justices of the peace of said town, was subsequently re-elected.

The election was set aside on appeal. The law having constituted the justices sole judges of the propriety of a resignation, their decision is final, and the inhabitants have no right to disregard it. Per Dix, May 9, 1838.

The acts of trustees, *de facto*, holding office under color of an election, subsequently declared void and set aside, are valid and binding upon their successors.

Samuel S. Lord and John S. Panlow were elected trustees of district No. 6, Lincklaen, at a meeting which was, on appeal, decided to be illegal, and the proceedings thereat void.

Before the decision, however, the trustees had contracted to build a school-house, in accordance with the proceedings of the meeting at which they were elected, and had hired a teacher for the winter school, and agreed to pay him \$24 of the public money, and had levied and partly collected a tax of \$50 voted by said meeting toward building the school-house.

Their successors refused to fulfill their contracts, and they appealed.

*Held*, that, until the decision declaring void the proceedings of the meeting that elected them, they were to all intents and purposes the legal officers of the district, so far as the public and third persons were concerned. They acted in their official and not in their individual capacity, for the district and not for themselves. The collection of the tax assessed by them could not be resisted;

all their contracts made within their official jurisdiction were legal and binding. They were competent to transact all the business of the district. Their successors, under the decision, succeeded, not merely to all their rights, but also to all their legal liabilities, and were bound to execute all their contracts entered into while acting under color of a legal election. Per Spencer, June 25, 1841.

Trustees have no lien on moneys belonging to the district, for expenses incurred by them in its behalf.

If they have been directed by the district to act, they can indemnify themselves by levying a tax without a vote of the district for that purpose.

Mr. Charles Kendall, a trustee of district No. 3, Bethany, Genesee county, had in his hands eighteen dollars and eighteen cents belonging to said district. At a special meeting held May 6, 1848, said sum was appropriated by a vote of the district for the purchase of a stove and other purposes.

Mr. Kendall claims that the district should pay him for the use of a stove bought by him and placed in the school-house without the authority of a vote of the district. The district refused to purchase the stove of Mr. Kendall, bought by him in good faith, and he retains in his hands three dollars for the use thereof. The good or bad designs, either of Mr. Kendall or of the district, can in no wise affect the case so as to render the district liable for the stove.

Mr. Kendall also claims that he should be allowed three dollars, which he alleges he paid for the district, in pursuance of a vote of the district. It is not stated when nor for what purpose the three dollars were expended, nor are any dates given, except that the annual report of the trustees in 1847 acknowledged the three dollars as a debt due Mr. Kendall from the district. But the district clerk certifies that the records of the district contain no mention of the said three dollars.

Mr. Kendall fails to establish a good claim against the district for the six dollars. Per A. G. Johnson, Deputy Superintendent, August 5, 1848.

Trustees of a school district have the sole power of making contracts relating to their districts, and of accepting the work performed under them.

The trustees of district No. 7, Depuyster, St. Lawrence county, by authority from the district, contracted with a builder to construct a school-house, to be completed by the 1st of November, 1848. The house was not completed until about a month after the time specified, and was not such an one in every particular as was contemplated in the contract.

After consultation the trustees accepted the building, thinking it better to do so than to subject themselves and the district to further trouble.

The acceptance of the building is appealed from, on the ground that the taxable inhabitants of the district have been wronged.

The trustees of a school district have the sole power of making contracts relating to their district, and of accepting the work performed under them. And in the absence of fraud or bad faith, there appears to be no way of rendering them liable for their acts.

In the present case, there appears to be no evidence of bad faith or intention to defraud the district. This department cannot therefore interfere. Per Morgan, January 27, 1849.

When a trustee is absent from a district, so as to be unable to act with his associates, the town superintendent (supervisor), on the application of the other trustees, will appoint a successor.

Some time in the month of September last, Mr. Gilbert, who had been elected a trustee of district No. 9, visited the western part of the State in company with his wife, whose parents reside there, for the benefit of her health. Leaving her, he returned, harvested his crops, and early in October again left, with the avowed intention of remaining until the ensuing spring. The other



two trustees being unable to agree in the management of the affairs of the district, and the employment of a teacher for the winter term, applied to the town superintendent to fill the vacancy which they supposed to exist in the district, in order to enable them to organize the winter school.

For all practical purposes, it is evident that a proper case for the action of the town superintendent was presented; Mr. Gilbert indeed may not have lost his legal rights as a resident of the district, but he had, at all events, ceased to be an inhabitant, and had expressly avowed his intention not to return to the district until the ensuing spring.

The department is disposed to coincide with the county superintendent in the opinion that an actual vacancy existed, created, if not by "removal from the district," in the legal acceptance of the term, by a virtual "refusal to serve," or incapacity to act, and that the interposition of the town superintendent by the appointment of a trustee in his place was legal. Per S. Young, December 26, 1846.

Trustees cannot retain moneys in their hands to compensate them for services which they may have rendered as trustees.  
The office is merely honorary.

The trustees of school district No. 5 have retained in their hands different sums, amounting in the aggregate to sixteen dollars and fifty cents, as it is stated in the appeal, for their services in bringing teachers to the district, taking them to be examined and carrying them home.

The only case in which a charge for expenses of transporting teachers could be sustained would be where it was part of the contract with the teacher that her expenses for traveling should be defrayed. In this case they would constitute, and should be charged against the teacher as, wages paid. The trustees are entitled to no remuneration from the district for their services in that capacity, the office being purely honorary.

They can retain no money for themselves except when they might have paid it for similar services to third persons, and then only for purposes expressly enumerated in the statute; carrying teachers to or from the place of their employment is not among those purposes.

The appeal is therefore sustained, and the trustees above named are severally ordered to pay to the town superintendent, for the use of the district, the amount which appears by the account aforesaid to have been illegally expended and retained by them. Per V. M. Rice, February 19, 1855.

The drawing of an order for public money is a ministerial act, which does not necessarily require the presence of the entire board of trustees.

The drawing of an order is a ministerial act, which does not necessarily require the presence of the entire board of trustees. It is simply the execution of a contract, which is obligatory upon all of them, if, as is to be presumed, the contract was regularly made. Its validity is not questioned by the appellant.

The respondents aver that Mr. Payne had refused to act with one of them, and present this as a reason for not consulting him upon drawing the order.

This would not excuse the omission if the act was one which involved the exercise of judgment, and therefore required a meeting of the entire board. A trustee cannot be permitted to retain his office as a mere obstruction to his colleagues. If he cannot act with his associates, he should resign; and if, without resigning, he neglects to perform the duties of his office, it is the duty of the town superintendent to prosecute him for the penalty imposed by the statute. But, until he has resigned or been superseded, his colleagues should call upon him regularly to take part in their official action, to the end that when his neglect and contumacy shall be established by reiterated refusals, an application may be made to the State Superintendent for his removal. Per V. M. Rice, Superintendent, June 26, 1855.

It is the duty of the trustees to employ a competent teacher, and have a school in their district at least six months (28 weeks) in a year.  
Trustee should not be teachers.

The trustees of district No. 8, Preston, Chenango county, had for a long period neglected to employ a teacher, and no school had been kept in the district, except for a few days, by one of the trustees. They were requested, December 26, 1855, by all the taxable inhabitants of the district, to employ a teacher, but had neglected to do so.

An appeal from their neglect was taken, and they failed to make a legal answer.

It is a matter of course, under the circumstances, that the appeal shall be sustained, and the trustees required to proceed without delay to engage a teacher who shall be in possession of a proper certificate of qualification before commencing his labors.

It is proper to remark that, while the employment of a trustee as teacher is nowhere prohibited, and his assumption of the task of instructing the school may, under some circumstances, be highly praiseworthy, yet the practice is to be discouraged. The fact that the teacher is one of the board that employs him and fixes his wages, necessarily gives room to a suspicion that he may have been able to make a contract more advantageous to himself and less advantageous to the district, than if some third party had been employed. Those who represent the public should never put themselves in a situation where their private interests may conflict with those of their constituents. Per V. M. Rice, March 18, 1856.

The trustees should call district meetings when requested to do so by a respectable number of inhabitants for a legitimate object.

One of the trustees of district No. 19, partly in Leicester and partly in Perry, resigned his office, and subsequently united with fifteen others in a petition to the remaining trustees to call a special meeting to fill the vacancy, and to transact such other business as might be deemed necessary.

The trustees declined to make the call, on the ground that they were apprehensive that the meeting, if called, might make such disposition of the public money as would interfere with previous arrangements and prove detrimental to the school then in operation.

The filling of an existing vacancy was a proper and legal purpose, and the meeting, if called within thirty days after the happening of the vacancy, might have elected a person. Before an appeal could be decided, the time within which the inhabitants can be called together will have expired, and the vacancy must be filled by appointment. The trustees have no right to conjecture that a meeting will adopt measures to injure the school. The principle cannot be sanctioned for a moment that the trustees may refuse to call a meeting of the inhabitants, upon the ground that the latter may adopt measures at variance with the views of the former as to the interests and welfare of the district. The trustees are the representatives and servants of the district, bound to carry out and obey the will of the inhabitants, when legally expressed, and not warranted in attempting, in any manner, to thwart their wishes. Per Spencer, December 23, 1840.

The official acts of two trustees, performed without notifying or consulting the other, are illegal and void.

At a district meeting held in district No. 7, Guilford, Chenango county, September 5, 1848, a resolution was passed directing the school to be kept in a room near Samuel Godfrey's, three years from the first day of April preceding.

It appears that the school-house in district No. 7 was burned in January, 1847. On the 20th of February, 1847, a meeting was held in the district, at which a site for a school-house was designated. This meeting was adjourned to the twenty-seventh of the same month, when the vote establishing the site was rescinded. Two of the trustees called a special meeting, to be held on the

15th of September 1847, without notifying or consulting the other trustee. At this meeting a tax was voted to pay for the site of a school-house, without designating the same, and also a tax to build a school-house.

The two trustees made out a tax list, dated December 24, 1847, and delivered it with the warrant attached to the collector, on the fourth of January following, more than three months after the tax was voted. With the money thus raised, a school-house was built upon the site selected by the district, on the twentieth day of February, but which was annulled by said district at the adjourned meeting of the twenty-seventh of the same month.

The proceedings in raising the tax and building the school-house cannot be sustained. The meeting called by two trustees without consulting or notifying the other trustee was illegal, and the votes of that meeting were void.

It is therefore decided that the house built upon the site not established by the district, and with a tax not legally raised, is not the school-house of the district, and that the vote of the district taken at the meeting of the 5th of September, 1848, ordering the school to be kept "in the room near Samuel Godfrey's," was legal. Per Morgan, November 16, 1848.

When a trustee is unable to discharge his duty as such trustee, by reason of imprisonment, the town superintendent (supervisor) may appoint his successor after the expiration of thirty days from the time of such imprisonment.

The facts of this case appear to be as follows:

Some three or four months previous to the annual meeting for the choice of district officers, one of the trustees for district No. 2, of the town of Evans, county of Erie, was arrested on execution, and committed to the jail limits of the county, where he has since been and still is confined.

At the annual meeting of the district, a motion was made to elect a trustee in the place of the individual thus imprisoned, but the majority, thinking there was no vacancy to be filled, refused to elect, and subsequently the town superintendent appointed Chauncey Stone a trustee, in the place of Enos Avery, the former incumbent.

An appeal was taken to the county superintendent of Erie county, who reversed the action of the town superintendent, and annulled the appointment.

Section 71, of Common School Laws, published in 1844, authorizes the town superintendent to appoint any person residing in the district to supply any vacancy occasioned by the death of the incumbent, refusal to serve, removal out of the district or incapacity of any officer, when the vacancy shall not have been filled by a district meeting within one month after the same shall occur; and the only question now presented is, had either of these contingencies happened one month previous to the time the appointment was made?

It would not, I think, do to hold that no other than a legal incapacity should operate to create a vacancy, nor will it do to say that a refusal to serve may not be as strongly inferred from the acts of an incumbent as by a direct assertion that he will not discharge the duties of his office.

Mr. Avery, no doubt, is an inhabitant of the district in every legal sense, yet in point of fact he is actually incapacitated from the discharge of his duties as trustee, by reason of his confinement upon the jail limits out of his town and out of the boundaries of his district.

The decision of the county superintendent is therefore reversed, and that of the town superintendent affirmed. Per N. S. Benton, October 8, 1846.

Trustees have the power to call special district meetings whenever they shall deem it necessary and proper, even though a meeting for the same purpose stands adjourned for a period more or less remote.

This is an appeal taken by three taxable inhabitants of school district No. 11, in the town of Skaneateles, Onondaga county, from the proceedings of the trustees of said district, in relation to a tax levied therein by the order of a special district meeting. The appellants state that, at a meeting held in said district, January 14, 1854, permission having been obtained from the town superintendent, a tax of \$500 was voted for the purpose of building an addition

to the school-house, which tax was duly collected; that the work was let to two bidders, for \$525, without consulting the district, or being authorized by a special meeting, thus exceeding their powers; that, at the annual meeting, the district refused to vote a tax for the additional \$25; that a special meeting was called for the purpose of voting upon such tax, and held on the 18th of November, 1854; which meeting, without entertaining the proposition, resolved, by a vote of nineteen against ten, to adjourn twenty-five weeks; that, directly afterward, the trustees called another special meeting, of which they gave notice themselves (the clerk having refused); that said meeting was held on the 25th of November, and by a vote of twenty-four against twenty-one levied the said tax of \$25; that said meeting was held in the afternoon, contrary to the usual custom of the district, and at a time when a previous meeting, called to consider this very question, stood adjourned.

There can be no doubt of the authority of the trustees of school districts to call special meetings whenever they shall deem it necessary and proper.

The statute declares this right in express terms, without regard to the circumstance that a meeting is already called, or stands adjourned for a period more or less remote. It is not difficult to imagine cases in which the interests of the district would sustain serious damage, if it was necessary to defer action till a period fixed by a previous meeting. Exigencies often arise, imperatively requiring that the inhabitants of a school district assemble within the shortest time practicable, and of these the trustees are to be the judges.

The appeal is dismissed. Per V. M. Rice, January 22, 1855.

A district meeting may prescribe the terms of a contract for building a school-house.

The trustees of district No. 13, in the town of Bethany, refused to pay Daniel R. Prindle the sum of \$72.50 upon his contract for building a school-house: First, on the ground that they had not executed the contract; and, second, that the school-house was useless to the district, because the right of way to it, over intervening lands, could not be obtained.

The district meeting which voted the tax for building the school-house had prescribed the terms of the contract, and the same was drawn up at the time by one of the trustees, and signed by the contractor. The trustees were directed to superintend the erection of the house according to its terms, and to fulfill it on the part of the district. The builder fulfilled his part, and the trustees recognized the contract by superintending and directing the work.

The trustees, as the agents and servants of the district, are the proper and indeed only persons to make and execute bargains and contracts on the part of the district. But the meeting was competent to specify the terms of a contract, and in this case did so, and one of the trustees drew it according to the terms prescribed. The contractor executed it on his part, and performed it. The trustees, by recognizing it and directing the work, were in fact parties to it, although they did not sign it.

The remaining objection is entirely groundless. The contractor for building the school-house cannot be in any way responsible for a failure of title to the site, or a right of way to it. The question of title and right of way is between the district and the grantors or owners of the land.

Having collected the tax of \$72.50 levied to pay for the house, they are legally and equitably bound to pay over the proceeds to the contractor. Per Young, February 3, 1843.

The trustees of a district are the only legal authority by which the vote of a district can be carried into execution.

At a special meeting held in district No. 2, Centreville, Allegany county, November 4, 1848, it was voted to change the site of the school-house, by a majority of votes. The district being an altered one, this vote was sufficient.

The site selected is situated at the extreme southern part of the district, making the distance which children residing in the extreme northern part of the district would be compelled to travel about four miles.

The inhabitants authorized Mr. Asa Robbins to superintend the removal of the house, without being associated with the trustees.

The trustees forbade Mr. Robbins to move the house from the old site. He, however, disregarding their remonstrance, located it upon the new site.

The trustees of a district are the only legal authority by which the votes of the district can be carried into execution. And although the inhabitants at a district meeting may direct that the trustees shall contract with a certain person to perform certain work, and that such person shall be associated with the trustees in such work, they cannot authorize such person to do any act, nor can the district contract with him, except through the trustees.

The vote directing Mr. Robbins to superintend the removal of the school-house without the intervention of the trustees was therefore illegal, and Mr. Robbins became a trespasser, after being forbidden by the trustees to move the school-house. Per Morgan, February 3, 1849.

Where a building committee, in concert with the trustees, are invested with discretionary power, by resolution of a district, and have entered upon the execution of their trust, by making contracts for materials, etc., the district cannot control or interfere with their plans.

This is an appeal from the proceedings of a building committee appointed to take charge of building a new school-house, and from the refusal of the trustees to call a special meeting for the purpose of comparing drafts and models of architecture and adopting the best plan for building a school-house, wood-house and other fixtures belonging to the same.

In reply to the appeal, the trustees and building committee allege that, on or about the 8th day of March last, at a special meeting called for the purpose, the district voted to build a new brick school-house, twenty by twenty-five and a half feet; that Benjamin Wright and others then submitted their plans and drafts for building said house, which were voted down by the meeting. A vote was then passed, giving the trustees and building committee discretionary power in regard to building and furnishing said house in the best and cheapest manner, according to the size above mentioned.

They further allege that, in pursuance of such vote, they went on and purchased brick and materials and entered into a contract for laying the brick and stone, and lathing and plastering the interior of the building, and procured window frames and doors, and sash, with glass set, and that the walls of the house were now up and the roof nearly completed.

Under such circumstances, the Superintendent is of the opinion that it is now too late to interfere with the proceedings of the building committee. The district might have restricted their powers, by a vote for that purpose, when they were appointed, but, having failed to do so, and having invested them with a discretion in the discharge of their duties, there is nothing in the case which calls for the interposition of this department. Per H. S. Randall, May 19, 1852.

When a site has been designated and a tax raised for building a school-house, a building committee may be appointed by the meeting. But contracts are to be made and money to be paid out by the trustees, and the building committee must be regarded as the agents of the trustees, to carry out the direction of the meeting. As agents of the trustees, the latter will be responsible for the fulfillment of their contracts up to the amount of the tax. Per Spencer, June 19, 1841.

The election of a trustee at an adjourned meeting valid.  
If a trustee renders his annual account to an adjourned annual meeting, he will not be removed because it is unsatisfactory.

Mr. Isaac Tracy, one of the trustees of district No. 5, Allen, Allegany county, omitted to make his annual report to the annual meeting, October 1, 1855, but claims that one was submitted and made by the clerk at an adjourned meeting, October second.

One of the trustees elected at the first meeting refused to serve, and at the adjourned meeting another was elected to fill the vacancy.

Mr. Tracy will not be removed because his account was not satisfactory. He is liable to a suit hereafter for any money that can be shown by that account, or otherwise, to have come into his hands, and which he cannot prove to have been legally expended or paid to a colleague or successor authorized to receive it. If, on the other hand, he entirely failed to render any account, he is liable to a penalty of twenty-five dollars, in addition to a judgment for any moneys proved to be in his hands.

The election of a trustee on the second day of October must be held to have been valid and regular. Admitting that the meeting the previous evening adjourned for the sole purpose of having the annual account of the trustees submitted, the adjourned meeting was nevertheless competent to fill any vacancy which might then exist in district offices. Such a vacancy was created by the refusal of Mr. Lincoln to serve. Per E. P. Smith, Deputy Superintendent, May 31, 1856.

The Superintendent has power to remove a trustee from office, for corruption or intentional neglect of official duties, or for willful disobedience of the orders of the department.

On the 20th of December last, the trustees in district No. 6, in the town of Somers, were directed and required by an order of this department, within ten days from the service upon them of such order, to execute a certain tax list and warrant, made out by Jacob G. Purdy, one of the trustees, for the collection of the amount voted at a special meeting held in said district on the 27th of September last, for building a school-house and out-buildings, and fencing the site, deducting therefrom the sum of \$8.50, the balance remaining in the hands of said trustees, on the sale of the house belonging to said district.

A copy of this order was served upon the two trustees, who refused to sign the tax list and warrant on the 25th of December. On the 2d day of January the trustees met by previous appointment. The tax list was produced, and the \$8.50 above named deducted therefrom, when the two trustees for the first time interposed an objection that a certain piece of land was included in the tax list which was not taxable in the district, and insisted upon its deduction, although no legal claim to that effect had been made by the owner or occupant of the land within the time prescribed by law. On the ensuing day, the trustees had another meeting, but Carpenter and Ferris still declined, on various pretenses, signing the tax list, and have, up to the present period, refused or neglected to carry into effect the order of the department.

This refusal is sought to be justified by them upon several grounds, among which the most important are that Purdy refused to make the necessary correction of the tax list, and also to account to his colleagues for certain pecuniary transactions of the district. Neither of these excuses can be received. If there were any error in the tax list, as presented to them for signature, it was clearly within their power, as the majority of the trustees, to have made the requisite correction in the mode prescribed by law. Whatever may have been the conduct of Mr. Purdy, it constituted no sufficient grounds for a refusal on their part to comply with an express order of this department. They have manifested a determination to resist the explicit direction of the Superintendent in the premises, and to evade the performance of their duties as trustees. In pursuance, therefore, of the authority vested in me by chap. 382, section 15 of the Laws of 1849, I do hereby remove the said Carpenter and Ferris from office as trustees of district No. 6 in the town of Somers. Per Morgan, January 28, 1851.

The State Superintendent will, on proper application, remove a trustee for unwarrantable neglect of official duty.

Elisha Bedell, one of the trustees of school district No. 1, in the town of Hempstead, is charged with a willful disturbance and interruption of the

school taught by Mary Augusta Brown, in said district. Mr. Van Cott, another of the trustees, is charged with a refusal to unite with one of his colleagues in prosecuting for such offense, in accordance with the statute.

It is in evidence that Mr. Bedell went to the school-room, and in the presence of the scholars used angry and abusive language to the teacher, openly countermanded her orders in conducting the school, and caused the school to be thrown into disorder, and that both teacher and pupils were much frightened by his language and threatening manner, and for some time after she was unable to proceed with the school.

The evidence is confirmed by the report of a committee of ten appointed by the inhabitants of the district, at the annual meeting, to visit and examine the school, who, in concluding their statement, observe that they "were compelled to the opinion that Mr. Bedell has thereby disqualified himself for the office of trustee, and that it is evidently for the welfare of the school that he should forthwith resign his office."

This array of evidence is met only by a general and unsatisfactory denial by Mr. Bedell.

There can be no doubt, in the opinion of the Superintendent, from evidence, that Mr. Bedell has been guilty of a gross and unjustifiable violation of law and neglect of official duty. The same conduct in an individual not officially connected with the school would unquestionably have incurred the penalty prescribed by law; and it certainly does not mitigate the offense, nor change its nature, that it was committed by an officer specially charged with the preservation of quiet and order in the school, and with the protection and guardianship of its interests.

The act of 1845, to prevent disturbances in schools, above referred to, makes it the special duty of the trustees of any school district in which any such offense shall be committed, to prosecute such offender, before any officer having cognizance of such offense. Mr. Van Cott, one of the two remaining trustees, having been called upon for the performance of this duty, positively refused to comply with said request, and still refuses so to do. This is clearly an unwarrantable neglect of official duty, for which no defense is interposed; and the said Elisha Bedell and Nicholas Van Cott are hereby removed from office as trustees of said district. Per Morgan, July, 1851.

When a town superintendent (supervisor) connives with a trustee to procure his resignation, and conceals it from the district, so that the inhabitants cannot elect a successor within thirty days after the resignation, and the town superintendent then makes the appointment, the department will set the appointment aside and order a new election.

Mr. Johnson, a trustee in district No. 4, Florence, proffered his resignation of office to the superintendent, which was accepted. This was done secretly, and obviously with the intention that the district should be unacquainted with it until after the expiration of thirty days, when the town superintendent could appoint a successor. It is stated that the town superintendent gave one of the trustees notice of the resignation, but it is clearly shown, and is not denied by the town superintendent, that this was done with a view of seeming to fulfill, rather than to carry out the meaning of the law, and allow the district to elect a successor, since this trustee was very cautious about letting any one know it.

The district not being permitted to choose the trustee, the town superintendent made the appointment the day before the expiration of the thirty days. This department cannot suffer a district to be imposed upon or deprived of any privileges by the management of officers or the intrigue of individuals. It is therefore ordered that the appointment of trustee made by the town superintendent of Florence, to supply the vacancy occasioned by the resignation of Mr. Johnson, as trustee of district No. 4, in said town, be set aside, and that the trustees of said district call a special meeting of the inhabitants to fill the vacancy. Per Morgan, February, 1849.

A trustee will be removed from office where it appears that he persistently refuses to assist his associates in making out a tax list ordered by a district meeting.

On the petition of two of the trustees of a district for the removal of the third, on the ground of his refusal to unite with them in making out a tax list and warrant as directed by a vote of the district, the defense of the third trustee is, that acting under legal advice and counsel, he has refused to act with the petitioners as trustee in making out the tax list aforesaid, for the reason that all the proceedings of the meeting relative thereto were illegal and void.

But it appears, on evidence that, on an appeal from the proceedings of such meeting, this department had declared the proceedings, including the vote to levy said tax, legal and valid. It further appears that, when the petitioners had made certain corrections in the tax list suggested by this third trustee, he still refused to sign the tax list as amended, and that he steadily refused to meet with the petitioners at any future time to make out a new tax list, or have any thing to do with it. It is therefore plain, that his motives were to defeat and avoid the making out of the tax list as voted by the district, and confirmed by this department. It is obviously the right and privilege of every man to take legal advice, as well in relation to public and official duties as to his private and personal affairs. But no man is suffered to interpose the plea of this privilege as a protection from the consequences of error or wrong doing in public or private concerns. When, therefore, under the advice of legal counsel, a school officer neglects or refuses to regard the direction of the district and the decisions of this department formally rendered and clearly announced, when the free action of the other district officers is obstructed, dissension perpetuated, difficulties and embarrassments multiplied, and all educational interests sacrificed, it ceases to be a question of honesty of purpose on the part of the offender, and he must be visited with the severest penalty which such action incurs—removal from office. Per H. H. Van Dyck, Superintendent, January 30, 1858.

What will justify the removal of trustees.

Whenever this department finds, in the action of trustees, only a stubborn determination to follow out their own purposes, regardless of the legal or equitable rights of teachers, and of the wishes and interests of the inhabitants of the district, whereby serious injury has been sustained, and must yet be sustained if their policy is pursued longer, it will immediately direct their removal from the office whose trust they have violated. Per H. H. Van Dyck, Superintendent, July 15, 1858.

A trustee will not be removed for refusing to concur with his associates in their policy in the management of district affairs, nor for supporting a private school.

On a petition for the removal from office of one of the trustees of the district, on account of his refusal to concur with his associates in regard to certain measures of district policy, and also upon the ground of his having contributed to the support of a private school, it was *held*, that, although he may have been in error relative to the justice and legality of the policy, still his refusal to act with the other trustees, dictated by his convictions of right, is not such contumacy as demands punishment. It is impossible to control the opinions of men; we must be content to overrule them where they are wrong. In the present case, the majority of the trustees have the power to overrule the opinions of the other, and that is all that the case requires.

Nor, is the fact of his contributing to the support of a private school any just ground for removing him from the office of trustee. It is the privilege of every man to send his children and contribute to the support of such school as he regards best for his own and his children's interest. The fact of his being a trustee does not deprive him of any right in the premises. Per E. W. Keyes, Deputy Superintendent, June 28, 1858.



Petition for the removal of a trustee for not agreeing with his associates, and for using rude and uncourteous language toward them, denied.

On the petition of two of the trustees asking for the removal from office of the third trustee, it appears that the third trustee refuses to co-operate with his associates in matters relating to the administration of school affairs, and that his language toward them is rude and uncourteous.

Concerning the disagreement of Mr. Simpson with his associates, they are the majority and can control, and it was never intended that this department should have power to make men agree, nor to punish them for disagreeing.

In regard to the incivility of the third trustee toward his associates, the district is supposed to know whether or not those whom they elect to office have sufficient culture and refinement, sufficient dignity and purity of character, properly to adorn the office to which they are elected; and if they see fit to elect one who is rude, vulgar and coarse in his language, this department will not and cannot interfere. Per H. H. Van Dyck, Superintendent, March 2, 1859.

Petition for the removal of a trustee for not agreeing with his associates, and for not being a suitable person for the office, denied.

On the petition of certain of the inhabitants, asking for the removal from office of one of the trustees, the petitioners allege that he is not a suitable person to hold the office, and also that he has displayed a factious opposition to the wishes of the district, and refuses to co-operate with his associates in carrying forward certain measures that a majority of the district wish to see enforced.

In regard to the first allegation, it is sufficient to answer that the inhabitants elected the trustee with a full knowledge of his character and responsibility, and of the powers and duties of the office.

In regard to the second allegation, the trustee whose removal is requested is in the minority, and his associates can control the action of the board; hence no necessity for his removal appears. Per H. H. Van Dyck, Superintendent, March 21, 1859.

A trustee will not be removed because he differs from his associates in opinion.

This is a petition for the removal from office of one of the trustees of the district.

The petition does not set forth such facts and circumstances as will justify the department in taking the action sought.

The facts proved, in the main, are a difference of opinion between the trustee whose removal is sought and his associates. However much the department might differ with the said trustee upon the points in controversy, it does not justify his removal on the ground of that difference of opinion. Per H. H. Van Dyck, Superintendent, February 14, 1861.

Where the trustees contracted with a man to build a school-house, and afterward contracted with another, who built the house; *held*, that the remedy of the first contractor is at law, and not on an appeal to this department.

On an appeal from the proceedings of two of the trustees, it appears that they entered into a contract with one McPherson to build a school-house, as authorized by the district, and that afterward they permitted one Barber to build the house.

The course of the trustees appears to be marked by strange inconsistencies, but I do not see that these come within the purview of this department. The remedy of Mr. McPherson is at law, and not through this department. The appellants do not specify any particular remedy which they wish to have applied, and, from their statement of the case, it is not such an one as will enable this department to afford the parties any relief. The appeal must therefore be dismissed. Per H. H. Van Dyck, Superintendent, February 3, 1860.

Trustees will not be required to let the building of a school-house to the lowest bidder, unless so instructed by a vote of the inhabitants.

By a vote of the inhabitants at a meeting duly convened, the trustees were directed to build a new school-house. They accordingly gave notice that they would receive proposals for building a house of given dimensions. The appellant put in a bid at \$340. Other bids were put in, among them one by Mr. Davis at \$350, which was accepted by the trustees. The appellant asks that the award be set aside, it not being given to the lowest bidder.

Had the district directed the trustees to let the contract for building the house to the lowest bidder, there would appear on the part of the trustees a departure from the authority with which they were vested, which would demand interference. But such is not the case, the trustees being left free to make such contract as they might deem most advantageous to the district. Nor did the notice which they gave place them under any obligation to the appellant in consideration of his bid being lower than that of any other. They were left free to make the award as they should deem most advantageous. It devolves upon the appellant to show either a legal claim by virtue of the notice given, or that the district is likely to suffer injury from the action of the trustees. Per H. H. Van Dyck, Superintendent, January 30, 1860.

Trustees may employ a person to do the merely clerical work of computing and writing out the tax list, they making the comparisons with the assessment roll, and fixing valuations of property not on the roll.

On an appeal from the acts of two trustees in making out a tax list, the only ground of complaint is that the trustees affixed their warrant to a tax list made out by a third party.

If this charge were sustained in all particulars, it would certainly invalidate the tax list. But the statements of the trustees establish that the list was examined by them, and found to be correct. This comparison of the list with the assessment roll, and pronouncing it correct according thereto, is essentially the exercise of judgment which devolves upon the trustees. The writing it down is but a clerical act which they may employ any one to perform.

The tax list being, therefore, essentially the work of the trustees, as the result of their judgment on examination and comparison, I must hold it to be a legal instrument. Per H. H. Van Dyck, Superintendent, March 31, 1858.

Where the action of trustees is appealed from on the grounds of illegality, the illegality must be proved as alleged. Until it is, the action of the trustees will be presumed to have been legal.

The appellant avers that the trustees followed the assessment rolls of 1856 in making out the tax list instead of the rolls of 1857. The point to be determined is, did the trustees follow the last assessment roll of the town? Upon this question the appellants produce no evidence. It devolves upon the appellants to show affirmatively that the assessment rolls used by the trustees were not the last assessment rolls of the town in which their district lies. Failing to do this, as they do, it will be presumed that the action of the trustees was regular and legal.

The appeal must therefore be dismissed, upon the ground that the appellants fail to make out a case of illegality against the trustees. Per H. H. Van Dyck, Superintendent, December 11, 1857.

A trustee cannot be permitted to avail himself of his official position to adjust the amount of compensation for fuel furnished by him to the district.

A trustee had furnished a certain amount of fuel for district purposes, in accordance with a resolution of the district. He afterward makes out a tax list for his compensation, which he calls upon his colleagues to sign, and which they refuse to do, alleging that the wood so furnished has never been measured, and that an exorbitant price is charged for it.

*Held*, that it was proper that the fuel should be paid for by tax, and that the amount found due the trustee should thus be paid. But the trustee cannot avail himself of his position as trustee to adjust the amount of his own compensation, or to exercise any influence in adjusting it by his own vote. This accords with the well established doctrine that a person assuming to deal in behalf of the public and dealing with himself cannot be allowed to make any profit. Equity requires, therefore, that the price of the wood thus furnished by the trustee should be cut down to the lowest possible rate for which it might have been furnished. Per H. H. Van Dyck, Superintendent, July 31, 1857.

A general vote of a meeting in favor of a peaceful adjustment of protracted controversies and lawsuits does not confer upon the trustees power to levy a tax for the purpose of paying any and all claims that may have arisen in consequence of such controversies.

On an appeal from a tax list and warrant made and issued by the trustees it appears that the district has been engaged in controversies in the progress of which suits have been prosecuted by and against the trustees, costs and expenses incurred and taxes levied, payment of which has been refused. At a special meeting for the purpose of deliberating concerning the pending actions, controversies and suits, the sentiment and expressions of the meeting were unanimously in favor of a peaceful settlement of existing controversies, and resolutions favorable to such settlement were adopted. The trustees have interpreted these resolutions as giving them absolute power to settle and adjust the pending controversies, withdraw and compromise suits, adjust outstanding claims, and to levy a tax to pay all demands and expenses thus created and incurred. In the exercise of this authority they have levied the tax from which this appeal is brought.

The fact is apparent and clear to my mind that the action of the meeting referred to did not invest the trustees with the exercise of the powers assumed. A general and indefinite vote, favorable to the peaceful solution of difficulties, hardly justifies an indiscriminate settlement of suits and doubtful claims, and the levy of a tax of nearly four hundred dollars to complete the settlement. I must hold that the trustees have very greatly exceeded any authority that I can find conferred upon them. They are acting without requisite authority. Per E. W. Keyes, Acting Superintendent, May 16, 1861.

An agreement in writing between a trustee and a contractor to build a school-house must have an internal revenue stamp affixed in order to be valid.

An agreement was entered into between the trustee and a contractor, under the authority of a district meeting, to build a new school-house for \$900. The contract was made and signed on the 7th day of May, and placed in the hands of a third party for safe keeping. A revenue stamp, as required by the act of Congress, was procured and handed to the person having the contract in custody, but the same was not attached until after the meeting of the district that evening, at which meeting a resolution was passed rescinding the authority given to the trustee for contracting for a new school-house.

The trustee claims that, the contract not having been stamped before the meeting took such action, the question had not passed beyond the jurisdiction of the meeting.

In this conclusion the trustee is correct. The contract was not completed or binding upon either party until the law of Congress, which under the Constitution of the United States is supreme, had been complied with. Per V. M. Rice, Superintendent, July 7, 1864.

A person elected as a librarian of a school district cannot be displaced except by a direct procedure on the part of some competent legal authority, on information in the nature of *quo warranto*, or on appeal from the election, even though the incumbent be an infant.

This was an appeal originally brought to the county superintendent of Saratoga from the refusal of the trustees to deliver over to the charge of the appellant the library of the district, he having been chosen unanimously as librarian

at the annual meeting of the district on the first Monday in October last. In their answer to the appeal, the trustees place their refusal upon the ground that the appellant is a minor, and could not, therefore, execute a valid bond for the preservation and safe keeping of the books belonging to the district library. The county superintendent very properly overruled this defense, holding that the appellant, though ineligible, must be recognized as the librarian *de facto* of the district, so far as the public and third persons are concerned, and that his right to the office could not be tried in this indirect way. No principle of law is better settled than that the actual incumbent of an office, holding under color of a legal election or appointment, can be displaced only by a direct procedure on the part of some competent legal authority on information in the nature of a *quo warranto* or otherwise; and that his acts, so far as the public are concerned, will be recognized as valid and legal to all intents and purposes while he continues to execute the office under claim of title. In this case, the appellant was unanimously elected librarian of the district, notwithstanding his admitted ineligibility, and it does not rest with the trustees to deprive him of the office in this indirect mode. They might have appealed from such election, placing their appeal expressly upon the ground of his ineligibility, and the county superintendent might have set aside the election and ordered a new meeting to fill the vacancy. But, not having resorted to this remedy, they cannot refuse to deliver over to him the library of the district on the ground of such ineligibility; nor are they warranted in assuming that the property of the district will be unsafe in his hands, on the ground of his want of responsibility. They may remove him from office whenever he willfully disobeys their directions in any matter relative to the preservation of the books and appurtenances of the library, or for any willful neglect of duty, etc., etc. But they cannot refuse to recognize him as the legally elected librarian of the district.

They are, therefore, hereby directed to deliver the library of the district into his hands, and the decision of the county superintendent is hereby affirmed. Per Young, January 29, 1845.

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## UNION SCHOOL DISTRICTS.

Trustees have no right to refuse to call a special meeting for the purpose of considering the question of organizing a union free school, when requested by fifteen legal voters of the district to call such meeting. Per V. M. Rice, Superintendent, March 21, 1866. (*Letters*, vol. 5, p. 222.)

The notice of a meeting to organize a union free school need not recite the names of the petitioners.  
If the notice contain irrelevant matter, it will be regarded as surplusage.

A special meeting was held, pursuant to notice, on the 13th of July, 1867, for the purpose of determining whether a union free school with an academic department should be organized therein, which question was decided in the affirmative by the requisite majority.

The appellants object to said proceedings, and ask to have them set aside for the following reasons:

1. Because the names of the persons signing the original call are not affixed to the trustees' notice.
2. Because the notice includes, as part of the object of the meeting, the establishment of an academical department.
3. On account of the alleged refusal of the chairman of said meeting to entertain certain motions offered by the minority.
4. On account of the reception of the vote of one Charles Riely, who, it is alleged, is not a legal voter.

In answer to the first charge made by the appellant, it is sufficient to say that the law does not require trustees, in their notice of a meeting to decide whether a union free school shall be organized, to recite the names of the signers of the original call. (*See sec. 1, title 9, General School Act.*)

The insertion in the notice of the words "with the academical department attached" is simply surplusage. That was a matter over which the meeting could obtain no jurisdiction, whatever was stated in the notice. Such a department may be organized in a union free school district whenever, in the opinion of the board of education, it shall be necessary. The action of said meeting upon this subject can be of no binding force upon the board of education, nor does such action invalidate the other proceedings of the meeting.

The testimony submitted in support of the third charge does not show that the chairman exceeded his powers, or abused the discretion ordinarily reposed in a presiding officer in any material point. The appellants complain that, after a vote had been taken upon the question of holding open the polls for fifteen minutes, and a division of the house called for, the chairman refused to order such division. It appears, however, that such division was not called for until the motion had been declared carried, and that thus, according to parliamentary usage, the chairman was right in refusing to order the division. So, too, complaint is made that votes were received after the polls were closed, or, rather, after the lists had been twice called over. But these votes having been received before the result was announced, the appellants cannot complain that they were illegally received.

In regard to Charles Riely, the appellants claim that he was disqualified from voting because, during the late war, he shirked the draft by absconding to Canada. Such conduct ought, in the opinion of the Superintendent, to disqualify a man from exercising any of the privileges of citizenship, but I am not aware of any statute in force in this State by which either deserters, shirks or rebels are disfranchised. It further appears that after Riely was challenged, his vote was not accepted until he had made the declaration required by law. The proceedings of said meeting seem to have been conducted with as much regularity and order as is usual in meetings of that character, and I must decline to interfere for the purpose of setting them aside. The appeal is hereby dismissed. Per V. M. Rice, September 7, 1867.

The notice of a meeting to form a union free school district must state the qualifications of voters, as required by law.

The trustees of a union free school district must be elected by ballot.

It appears that the meeting decided to organize a union free school, and that the voters proceeded to elect Wm. P. Delamater, James H. Elmendorf, and James Robison, as trustees of said union free school district, but that they did not elect said trustees by ballot. The appellants ask to have the proceedings of said meeting declared void and set aside on the following grounds: First, because the notices were not made in accordance with law, the qualifications of voters not being therein stated, as required by section 1 of title 9 of the general school act of 1864. Second, because the trustees were not elected by ballot, as required by section 5 of the same title and act. These points are well taken by the appellants, and are sufficient to sustain the appeal. Much as the Superintendent desires to encourage the formation of union free schools, anxious as he is to sustain trustees and inhabitants in such efforts, he cannot go outside of the law to organize them. The provisions of law in regard to the organization of such schools are plain and easily understood, and, unless they are observed by trustees and inhabitants, those individuals will have had their labor in vain. The proceedings of said special meeting are hereby declared void. Nothing contained in this decision should be construed as preventing or prohibiting the trustees of said district from calling another special meeting of the inhabitants of the said district, at any time, for the purpose of determining whether a union free school shall be established therein. Per V. M. Rice, May 21, 1866.

A meeting, though duly called, cannot acquire jurisdiction of the question of forming a union free school, when less than one-third of the legal voters of the district are present.

It is only at a meeting called as directed by the statute, where at least one-third of the legal voters are present, that the question of organizing a union free school can be considered.

Where a question of jurisdiction is raised, the facts establishing jurisdiction must be produced. Per E. W. Keyes, Deputy Superintendent, May 15, 1863.

Where less than one-third of the voters of the district is present at a special meeting, the meeting cannot take action in the matter of organizing a union free school.

This is an appeal from the proceedings of a special district meeting called for the purpose of organizing a union free school.

I consider it to be conclusively established by the testimony that less than one-third of the legal voters of the district was present at the meeting when the question upon the formation of a union free school was considered and acted upon. Less than one-third of the inhabitants could not acquire jurisdiction of the question; hence, the action of that meeting must be regarded as wholly void. Per E. W. Keyes, Acting Superintendent, January 1, 1862.

In a meeting called to organize a union free school district, it requires an affirmative vote of two-thirds of those present and voting in order to establish such district.

The meetings from the proceedings of which this appeal is brought were held on the 21st and 23d of November, 1866, for the purpose of determining whether said district should be organized as a union free school district, under the provisions of title 9, of the general school act of 1864. The vote on the main question was taken at the meeting held on the 21st of November. The appellants and others moved that the vote on the main question be taken by ballot, or by taking and recording the ayes and noes, but these propositions were voted down by said meeting, and the vote on the main question was taken *viva voce*, and declared by the chairman to have been in favor of the establishment of such union free school. The meeting then proceeded to transact certain other business, and then adjourned to the 23d of November. The meeting of the 23d simply ratified the proceedings of the former meeting, and then adjourned *sine die*.

These appellants, believing that less than two-thirds of the voters present voted in favor of the establishment of such union free school, bring this appeal, claiming that it is irregular and illegal to vote on the question of organizing a free school otherwise than by ballot, or by ayes and noes. They also swear that, to the best of their knowledge and belief, less than two-thirds of the voters present and voting at said meeting, held on the 21st instant, voted in favor of establishing such free school. As the law requires a two-thirds vote of the persons present and voting at any such meeting, as a prerequisite to organization under the free school act, it is but fair to infer that the intent of the law is that the vote shall be taken in such manner that the precise number of voters for and against the proposition may be known. While it is not necessarily fatal to the proceedings of a free school meeting to have the vote on the main question taken *viva voce*, still, it throws the burden of proof upon those claiming that a free school has been organized under such vote, and they must show by conclusive evidence, if an appeal be taken from the proceedings, that at least two-thirds of those present and voting at such meeting voted to adopt the free school organization. This is what the respondents have attempted to do in the present case. They have procured, and submit in evidence, the affidavits of fifty-five persons, who swear that they are legal voters in said district, that they were present at the meeting held therein on the 21st of November, as aforesaid, and that they voted to adopt the union free school organization. One of the fifty-five, Michael Conley, subsequently denies his affidavit, made as above stated, and swears that he did not vote in favor of the free school organization. The respondents also submit the affidavits of several voters who were

not present at said meeting, but who testify that if they had been present they should have voted to adopt the free school organization. These last affidavits cannot affect the case in any way, because the question is not how certain persons might have voted had they been present, but: "How did those vote who were present?" It appears, then, that fifty-four persons voted to adopt the free school organization. Now, the appellants submit the affidavits of thirty-seven persons, who swear that they are legal voters in said district, that they were present at said meeting, and that they voted against the union free school organization. Thus, from all the testimony submitted, it appears that ninety-one votes were cast at said meeting, of which fifty-four were in favor of adopting the free school organization, and thirty-seven against the same. Less than two-thirds of those voting on the question having voted to adopt the free school organization, a free school was not legally organized in said district, and the action of the chairman in declaring the district a free school district is hereby declared void, and is set aside. Per V. M. Rice, February 19, 1867.

The trustees of a union free school districts are the legal successors of the trustees of the several districts consolidated, and, of course, are entitled to receive the several moneys apportioned on account of those districts. Per E. W. Keyes, Deputy Superintendent, April 10, 1865. (*Letters*, vol. 4, p. 28.)

A "union free school district" is not entitled to elect a district clerk in addition to the board of education. Per S. D. Barr, Deputy Superintendent, September 27, 1865. (*Letters*, vol. 4, p. 276.)

A union free school district which has once determined upon the number of trustees constituting the board of education has no power to increase or diminish the number. Per S. D. Barr, Deputy Superintendent, November 24, 1866. (*Letters*, vol. 5, p. 707.)

In union free school districts, the clerk of the board is the district clerk, and as such is the proper person to give notice of special meetings of the voters. Per S. D. Barr, Deputy Superintendent, May 11, 1866. (*Letters*, vol. 5, p. 377.)

The board of education of a union free school must make to the school commissioner the same kind of a report as is required of trustees. Per S. D. Barr, Deputy Superintendent, October 9, 1865. (*Letters*, vol. 4, p. 295.)

Board of education of union free school districts can at any time appoint a new treasurer or collector.

By examining section 7 of the union free School Law of 1864, you will find that the treasurer and collector of union free school districts hold their offices during the pleasure of the board of education. Hence, the board can at any time appoint a new treasurer or collector. In case of an appointment the board should by resolution direct the clerk to give the former incumbent notice that a person has been appointed to succeed him in the office, and require him to turn over to his successor all papers, funds and other matters connected with the office. Per S. D. Barr, Deputy Superintendent, May 11, 1866. (*Letters*, vol. 5, p. 380.)

Treasurer and collector of union free school district cannot be a member of board of education.

It is not legal for the board of education to appoint a member thereof treasurer of the board. The treasurer of the board and collector must each execute and deliver to the board a bond conditioned for the faithful discharge of the duties of his office. The law contemplates a treasurer and collector separate and distinct from the board. It might become necessary for the board to sue the treasurer or collector. He, being a member of the board, could not unite with them in suing himself. Per S. D. Barr, Deputy Superintendent, October 13, 1865. (*Letters*, vol. 4, p. 324.)

Union free school districts not limited in the amount they can raise for the building of school-houses, nor need they obtain consent of supervisor where more than \$1,000 is to be raised for that purpose.

Union free school districts are not limited as to the amount they can raise for the purpose of building school-houses, nor is it necessary to obtain the consent of the school commissioner where an amount exceeding \$1,000 is to be raised. Section 18 of title 7 states the general rule only, and is therefore limited by section 10 of title 9, which gives a special rule for certain specified districts. Per V. M. Rice, Superintendent, October 3, 1866. (*Letters*, vol. 5, p. 604.)

Board of education of union free school districts has no power to levy a tax for payment of teachers' wages, without vote of district authorizing it, except an estimate of needful amount for this purpose has been presented by the board at some annual or special meeting, and inhabitants neglected or refused to vote said tax.

The "board of education" of a union free school district have no power to levy a tax for the payment of teachers' wages without a vote of the district authorizing it, except where an estimate of the amount necessary for this purpose has been presented by the board to some annual or special meeting and the inhabitants have refused or neglected to vote said tax. (*See sections 15, 16 and 17, title 9, chapter 555, Laws of 1864.*) Per S. D. Barr, Deputy Superintendent, November 18, 1865. (*Letters*, vol. 4, p. 521.)

Boards of education of union free school districts have no power to fix a different time for annual meetings than what the law has appointed. Meetings held on other days illegal.

As the law has fixed the time for annual meetings of boards of education of union free school districts, these boards have no power to prescribe a different time. The Superintendent is of the opinion that the proceedings of an annual meeting held on the second Wednesday of October would be held invalid. A new meeting should be held on or after the third Tuesday of October, at which the regular business of the annual meeting should be transacted. Per V. M. Rice, Superintendent. (*Letters*, vol. 5, p. 650.)

A *viva voce* vote to raise a tax for building in a union free school district is legal and binding upon inhabitants. Union free school districts may raise any necessary sum for building without consent of supervisors. New building must be erected upon site now owned and occupied by district, unless inhabitants direct otherwise. Board must not sell or tear down old house without consent of inhabitants, nor must they fence school lot, or supply house with school furniture, without directions from inhabitants.

By virtue of section 10 of the free school act, your district had power to vote such sum as the inhabitants deemed necessary for the purpose of building a new school-house, and the same section gives the inhabitants power to direct that the tax voted by them shall be raised by installments without restricting them, as in the case of districts under the general act, to a vote "to be ascertained by taking and recording the ayes and noes." The Superintendent is of the opinion, therefore, that a *viva voce* vote to raise a tax for building in a union free school district is legal and binding upon the inhabitants.

2. Union free school districts have power to raise any sum which the inhabitants may deem necessary for building purposes, without obtaining the consent of the school commissioner in whose district they are situated.

3. A taxable inhabitant is one who is liable to be assessed, whether he is actually taxed or not.

4. Unless otherwise specially directed by the inhabitants, the board of education must cause the new building to be erected on the site now owned and occupied by the district.

5. The board have no right to sell or tear down the old school-house, unless so specially directed by the inhabitants.

6. Where the inhabitants have conferred upon the board the simple power to build a new house for the district, the Superintendent is of the opinion that the board cannot safely proceed to fence the school lot, or supply the house with ordinary school furniture, without farther action on the part of the inhabitants.



They may seat the house, or furnish teachers' desks, etc., because those articles are fixtures, and form properly a part of the house; but more than this the Superintendent would not advise them to do unless authorized by the inhabitants. Per V. M. Rice, Superintendent, October 24, 1864. (*Letters, vol. 5, p. 653.*)

A pupil may be expelled from the school by order of the board of education for immoral conduct or persistent disobedience.

The board has the right to prescribe the course of study and the text-books.

The board has the further right to require regular and prompt attendance on the part of the pupils. Per V. M. Rice, Superintendent, January 22, 1866. (*Letters, vol. 5, p. 94.*)

Free school districts cannot return to the old system.

After it has been decided at a regularly called meeting, legally held by the district, to establish a union free school in such district, it is not in the power of the inhabitants to return to the old system; and any resolution to that effect passed at any subsequent meeting of the district would be simply null and void. Per V. M. Rice, Superintendent, April 12, 1866. (*Letters, vol. 5, p. 297.*)

Board of education of a union free school district cannot appoint as treasurer or collector a person who is not a taxable inhabitant of the district; but if the one appointed collector possesses personal property valued at fifty dollars, exclusive of such as is by law exempt from levy and sale on execution, he is a taxable inhabitant.

It is not in the power of the board of education of a union free school district to appoint as treasurer or collector a person who is not a taxable inhabitant of the district; but if the person appointed collector possesses personal property of the value of fifty dollars, exclusive of such as is by law exempt from levy and sale on execution, he is a taxable inhabitant within the meaning of the act. It is not conclusive evidence that he is not a taxable inhabitant because his name does not appear on the assessment roll of the town. Per V. M. Rice, Superintendent, November 20, 1865. (*Letters, vol. 4, p. 534.*)

The trustees of a union free school district elected at the first meeting enter upon their office forthwith, and hold office until one, two or three years from the second Tuesday of October coincident with or following their election.

The trustees of union free school districts may and should enter upon their duties immediately after their election, and they hold their office until one, two and three years "from the second Tuesday of October coincident with or following their election." Among other things, it is the purpose of section five to make provision: First, for the term of office of trustees elected in and for union free school districts, at the annual meeting on the second Tuesday of October. Those elected at such time hold their office by virtue of their election. Second, for the term of office of those who shall be elected when the district shall be formed prior to the second Tuesday of October, the time of holding the annual meeting. These hold their office, by virtue of their election, until the second Tuesday in the next following October, and one, two and three years thereafter, according to the class to which by the action of the meeting they may have been assigned. You will not fail to perceive that, after the first organization of union free school districts other than those whose limits correspond with those of any city or incorporated village, the term of office of trustees expires on the day of the annual meeting, and that, after the first annual meeting, no class hold office by virtue of their election for more than one, two or three years. Per V. M. Rice, Superintendent, December 21, 1865. (*Letters, vol. 4, p. 713.*)

## VACANCY.

A person elected at the same time clerk and trustee, and accepting the office of trustee, vacates the clerkship, and a new clerk must be elected or appointed in his place. Per Spencer, May 22, 1839.

A trustee cannot be librarian.

A librarian is subject to the direction of the trustees and responsible to them. There is an incongruity in a man being subject and responsible to himself. There is the same incompatibility between the offices of librarian and trustee as collector and trustee. Per Spencer, November 25, 1839.

District officers cease to be such when set off from an old district to a new one.

If a new district (15) was erected out of No. 2, and No. 2 was not declared a new district, it is in law the same district, although its territory may be diminished; and the trustees and officers in office at the time of the division, and residing in No. 2, will continue such during the year for which they were elected. But such of them as reside in district No. 15 and do not change their residence to No. 2 cease to be officers of No. 2, by virtue of the provision of the statute which declares, in reference to a local officer, that a vacancy is created by an incumbent ceasing to be an inhabitant of the district for which he was appointed. Per Spencer, May 15, 1839.

Where a town superintendent (supervisor) decides that a vacancy exists in the office of trustee, he should wait one month after announcing his decision before assuming to fill the vacancy.

This is an appeal from a decision and order of the town superintendent of Beekmantown, on the 22d day of November last, deciding that there were two vacancies in the office of trustee in said district, and appointing two persons to fill such vacancies.

From a careful examination of the papers, I am satisfied that the town superintendent was correct in deciding that the vacancies existed; but, the district being one lying partly in two different towns, it required the action of the town superintendents of both towns to fill the vacancies by appointment. (By section 30, article 7, chapter 555, Laws of 1864, the vacancy may be filled by the supervisor of the town in which the school-house is situated.) The appointments which were made were therefore void, although the town superintendent, in proceeding to fill the vacancies, may have acted in perfect good faith.

But, even if he had the right to fill the vacancy, I am of opinion that he should have waited one month after announcing his decision that the office was vacant, in order that the inhabitants might have an opportunity to supply the vacancies if they desired to do so.

Therefore, it is hereby declared that the appointments so as aforesaid made were and are irregular and void, and the clerk of said district is hereby ordered, within ten days after he receives this order, to call a special meeting for the purpose of filling the vacancies which exist in the office of trustee in said district. Per H. S. Randall, March 26, 1852.

A member of a board of education elected to and accepting the office of supervisor vacates his office as member of such board. The remaining members of the board have power to fill the vacancy until the next annual meeting.

Until such appointment is made the remaining members of the board have full power to act on all matters, and their contracts with teachers for any term whatsoever are valid. Per E. W. Keyes, March 9, 1865. (*Letters*, vol. 3, p. 680.)

A legal appointment by the supervisor, of a trustee to fill a vacancy, cannot be set aside by this department, nor be superseded by an election.

On an appeal from the action of the supervisor, in appointing a person to fill a vacancy in the office of trustee, the facts are as follows: A vacancy had occurred in the office of trustee, and a special meeting was called, after some delay, for the purpose of filling it. Meantime, however, the supervisor had appointed a person to fill the vacancy, and an appeal from his action is thereupon brought to this department.

This proceeding on the part of the supervisor was strictly legal, and, in the absence of all evidence showing fraud or collusion, it cannot be set aside. The request that this department direct the calling of a new meeting for the purpose of electing a trustee cannot be granted. The person appointed by the supervisor to fill the vacancy, holding his office by legal and valid appointment, cannot be superseded by the action of a district meeting. Per E. W. Keyes, Deputy Superintendent, May 6, 1859.

Appointment of trustee by supervisor to fill vacancy is not for the balance of unexpired term, but only till next annual meeting.

An appointment of trustee by the supervisor, to fill vacancy, is not for the balance of the unexpired term, but only till the next annual meeting. If the vacancy is filled by a district meeting, the rule is different. A resident of the district, and legal voter at town meetings, may or may not be qualified to vote at school meetings. The qualifications of voters at school meetings are very clearly set forth in section 12, title 7, chapter 553, Laws of 1864. Per V. M. Rice, Superintendent, October 15, 1866. (*Letters*, vol. 5, p. 623.)

An incapacity existing at the time of the election of trustees, which the voters have disregarded, must be judicially declared by this department, before a vacancy is created that will authorize a new election.

Where one of the trustees elected at a district meeting was an alien by birth, and had never filed in the office of the Secretary of State an affidavit of having taken the incipient steps to be naturalized, necessary to enable him to hold real estate, it was held that he was not entitled to vote at a school district meeting, and that, upon the general principle that no person is qualified to hold an office who is not himself entitled to vote, his election as trustee was void. But the proceedings of a subsequent special meeting of the district, assuming to decide that he was ineligible, displacing him, and electing another person in his place, were totally unauthorized, and such election was illegal and void. A district meeting can only elect in case of a vacancy caused by death, removal, or incapacity occurring after the election of the officer. An incapacity existing at the time of the election, and which the voters chose to disregard, must be judicially declared by this department or some other legal tribunal, upon direct proceedings for that purpose, before a vacancy can be created authorizing a new election. Per E. P. Smith, Deputy Superintendent, June 23, 1857.

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## VOTERS.

In an appeal to set aside the proceedings of a meeting on account of illegal voting, it is not enough to allege that a man was not a legal voter. The specific grounds of disqualification should be set forth. Per Dix, December 1, 1838.

An election will not be set aside because of illegal votes when they do not affect the result.

At the election of a trustee in district No. 2, Rochester, Ulster county, January 15, 1856, four illegal votes were cast for the successful candidate, who, however, had ten majority.

The reception of the four illegal votes did not affect the result, and the appeal must be dismissed. Per E. P. Smith, Deputy Superintendent, February 28, 1856.

Proceedings carried by illegal votes will be set aside on appeal.

Neither the Department of Public Instruction, nor the moderator of a school district meeting, has any right, under the statute, to prohibit any male person, who makes the declaration required by law, from voting; but it will be the duty of this department to correct and set aside all proceedings consummated or carried by votes clearly illegal, the result depending upon them. It is the duty of the person acting as chairman or moderator of a district meeting to permit any person challenged to make the declaration required by statute, and any refusal to perform this duty will be good ground for setting aside the proceedings of a school district meeting. Per N. S. Benton, July 12, 1847.

An alien who is a legal voter may hold office in a school district.

Mr. George Oliver, an alien, who was entitled to hold real estate, having taken the necessary legal steps for that purpose, was elected trustee of school district No. 1, Bombay, on the 4th day of October, 1842.

The Superintendent is unable to see any good cause why any inhabitant of a school district, legally authorized to vote therein, should not be admitted to a free participation in the offices of the district, or rather why he should claim an exemption from the burdens which the law devolves upon the other inhabitants of the district in supervising its affairs from year to year. There is in reality very little analogy in cases of this description, to those against which our laws in reference to aliens were intended to provide. I am therefore disposed to hold any and every legal voter in a school district eligible as an officer therein. Per Young, November 18, 1842.

In electing trustees, the form of the ballot is not material, if it unmistakably express the voter's preference.

The statute requires, when trustees are elected at the annual meeting, that "the voters shall designate by their votes for which term each of the trustees is elected." The language by which such designation shall be shown is left to the voter's selection. Where two trustees are to be elected for different terms, the words on the ballot "long term" and "short term" sufficiently indicate the intention of the voters. But it cannot be said that this form of ballot is the only legal form. Any form that sufficiently designates the voter's intention must be held good under the statute.

The principle governing is that a simple informality, or an immaterial omission, shall not deprive a lawful voter of his voice in the election. Per V. M. Rice, Superintendent, May 8, 1862.

Qualifications necessary to entitle aliens to vote at district meetings.

On an appeal from the proceedings of a special meeting, it appears that the meeting had voted, by a clear majority, to enlarge the site and build a new school-house. It is claimed by the appellants that the meeting was controlled by illegal votes.

It is insufficient proof of their right to vote at district meetings that certain persons have declared their intention of becoming citizens, and forwarded their declaration to the Secretary of State, by mail, in time, as they say, to have reached him before the meeting was held at which they voted. Such persons must clearly prove the actual filing of their declaration of intentions before they can be regarded as legal voters at such election. Per E. W. Keyes, Deputy Superintendent, May 2, 1859.

A chairman of a school district meeting is entitled to a vote upon all questions involving the levying of a tax.

This is an appeal from the proceedings of the annual meeting held in said district on the 5th day of April last, in voting a tax of \$400 for the purpose of building a school-house therein. It appears by the papers in the case that the resolution by which the tax was authorized was passed by a vote of six to five against the same. The appellant claims that the resolution was illegally passed, because,

1. The clerk of the meeting refused to call the name of the chairman, denying his right to vote ;

2. That had the chairman been allowed to vote, he would have voted against said resolution ; and

3. That one of the votes in favor of said resolution was given by a person who was not a legal voter in said district.

In their answer to the appeal, the trustees concede that the chairman was not permitted to vote upon said resolution, but they deny that he was lawfully entitled to vote thereon, on the ground that he was chairman of the meeting and only entitled to a casting vote.

The trustees having made this concession have clearly shown that the proceedings of the meeting were not legally conducted, inasmuch as a legal vote was rejected, which if received might have affected the result of the vote upon the resolution. The chairman was equally entitled to vote upon the question of raising a tax with the other tax payers and voters of the district, and the meeting had no right to deprive him of his privileges or others of the benefits which they might have received had his vote been counted.

It is therefore ordered that the proceedings of the meeting aforesaid, so far as the same relate to the resolution authorizing a tax of \$400 for the purpose of building a school-house, be and the same are hereby set aside. Per H. S. Randall, June 25, 1852.

Who are legal voters at district meetings, and what vote is necessary to raise tax by installments.

The qualification of voters in school district meetings is defined in section 59, chapter 480, Laws of 1847. (No. 84, *School Laws and Forms for 1848*. See also sec. 12, title 7, page 80, *ante*, *General School Act*.)

Every person, to be a voter in a school district meeting, must, therefore, be a male, twenty-one years of age, and a resident of the district. Any person having these three qualifications, and "entitled to hold lands in this State, who owns or hires real property in such district, subject to taxation for school purposes," is a voter.

This clause authorizes aliens, who have declared their intention to become citizens of the United States, and who have filed a certificate of such intention in the office of the Secretary of State, to vote, provided they own or hire real property in the district. It also authorizes tenants of houses or lands, subject to taxation in the district, to vote, whether they pay the taxes or not. Legal voters at town meetings, who have paid a rate bill for teachers' wages within one year preceding, are also voters in the district where they reside.

Any person who has a family, and is a legal voter at town meetings, and has personal property liable to be taxed in the district, exceeding fifty dollars in value, exclusive of such as is exempt from execution, is also a voter.

A man without a family, having personal property exceeding fifty dollars in value, liable to taxation, is also a voter, because his property is none of it exempt from execution.

Hence, it follows that while, on the one hand, in some cases, aliens, not legal voters at town meetings, may be legal voters at district school meetings ; on the other hand, in all cases, legal voters at town meetings, who do not own or hire real property, and who have not personal property exempt from execution exceeding fifty dollars in value, are not legal voters in district school meetings. And, as to be "a male of full age, and a resident of the district," is an essential

qualification of every voter, women are necessarily denied the privilege of voting in any case.

A district meeting, legally called and assembled, may, by a majority of those present and voting, vote to raise \$400 (\$1,000) or less, for the purpose of building a school-house, and, also, any sum necessary for the purchase of a site. And, if the town superintendent shall certify in writing that a larger sum is necessary for building a school-house, and shall specify the sum, any amount not exceeding the sum so specified may be raised by a majority of the legal voters present and voting at the meeting. (*Sec. 70, chap. 480, Laws of 1847.*)

School districts are not permitted to mortgage or incur their school-house lot. But in order to enable a district to raise a large sum of money, without the necessity of laying a tax for the whole of it in one year, section 71, chapter 480, Laws of 1847, provides for raising a tax by installments.

The words "taxable inhabitants," in this section, being used without limitation or qualification, must be construed to mean all who are liable to be taxed, and who attend the meeting, citizens, aliens, women, minors, residing in the district. The number of taxable inhabitants can be ascertained from the last assessment roll of the town. A majority of such inhabitants attending, to be ascertained by taking and recording the ayes and noes, is necessary to the validity of a vote to raise a tax by installments. But this majority must be made up of legal voters, for, although this section of the statute requires a majority of all the taxable inhabitants attending to have their names recorded in the affirmative, it does not make all the taxable inhabitants legal voters for the purposes of such a vote. Who then are legal voters under this section? The same persons, and no others, authorized to vote by section 59, hereinbefore quoted. Neither women nor minors, nor persons not liable to be taxed, can vote upon the question of raising a tax by installments. Therefore, a man who hires a house and is a legal voter at district meetings in ordinary cases, but who is not on the assessment roll, and pays no taxes, cannot vote upon this question. If one person owned all the land of a school district, and it was all assessed to the owner, the tenants could not vote upon this question, unless they were assessed for personal property. Non-residents, although taxable, are not such "taxable inhabitants," within the meaning of this section, as to be enumerated in estimating the number of taxable inhabitants in the district, and they are not voters in any case. The tax raised by virtue of this section must also be raised by equal annual installments. For example: If it be voted to raise \$1,000 in five equal annual installments, the sum to be raised each year must be \$200, and not, as some have supposed, \$200 with the interest, that is \$207 at the end of the first year, \$214 at the end of the second year, and so on. Trustees and others must therefore make their contracts accordingly. Per Morgan, September 26, 1848.\*

An alien, though he has taken the incipient measures to be naturalized, is not qualified to vote at a school district meeting in the district where he resides, unless an affidavit of that fact be filed and recorded in the office of the Secretary of State.

This is an appeal taken by five of the inhabitants from the proceedings of a special school district meeting, holden in district No. 6, in the town of Montague, Lewis county, in the early part of October, 1854.

The appellants aver that persons not duly qualified to vote did vote at said meeting, and that their votes affected the result. It seems that the only material vote of the meeting was carried by two majority, whereas the right of three persons to vote, who voted with the majority, was doubtful. One of them was a man working for a resident of the district, but whether he was of legal age and possessed the other requisite qualifications is by no means certain.

\* Since this decision was made, the law has added to the qualifications—a person "who has permanently residing with him a child, or children, of school age, some one or more of whom shall have attended the district school for a period of at least eight weeks within one year preceding." (*See p. 98, ante.*)

The installments are required now to be equal, but not annual, and interest may be added, as they become due and payable. (*See p. 121, ante.*)

The other two persons, Messrs. Fuller and Boyd, are aliens, and only during the week that the meeting of May, 1854, stood adjourned to, did they file their intentions of becoming citizens. An alien, though he has taken the incipient measures to obtain naturalization, cannot hold real property or be a qualified voter at a school district meeting in the district where he resides.

He is required to make a deposition or affirmation in writing, before an officer authorized to take the proofs of deeds to be recorded, that he is a resident of and intends always to reside in the United States and to become a citizen thereof as soon as he can be naturalized, and that he has taken such incipient measures as the laws of the United States require to enable him to obtain naturalization, which shall be certified by such officer, and be filed and recorded by the Secretary of State in a book to be kept by him for that purpose, and such certificate, or a certified copy of it, shall be evidence of the facts therein contained.

As Messrs. Fuller and Boyd did not comply with the requirements of the statute, and therefore could not become owners of taxable property, the conclusion becomes a necessary sequence that the vote was void. Per V. M. Rice, October 30, 1854.

The right to vote at a school district meeting does not depend upon the fact that the person offering to vote has been actually taxed, but rather upon his liability to taxation. A motion to reconsider a vote of a district meeting may be made by a person voting with the minority, unless the meeting have a different rule.

The objections of the appellants are that two persons voted at the district meeting, for the change of site, who are not enrolled upon the tax list as taxable inhabitants; that, by the list referred to, there are twenty-six taxable inhabitants; that only twelve "taxable inhabitants" voted in favor and twelve against the resolution changing the site; that the motion to reconsider a former resolution adopted at a previous meeting, in regard to the site, was made by a person who, at such previous meeting, voted against the resolution of which he moved a reconsideration.

The rule of legislative proceedings, which requires a motion for reconsideration to be made by one who voted with the prevailing party, is not binding upon the district meetings, unless expressly adopted by them. There is, therefore, no force in the objection based upon a departure from this rule, as it does not appear to have been acted upon by the inhabitants of district No. 14.

The respondents allege that fourteen persons voted for the change of site. This is not inconsistent with the allegation of the appellants, for they acknowledge that twelve "taxable inhabitants" thus voted, and they aver that two persons whom they deny to be legal voters also voted for the resolution. It was then properly passed, provided the two persons named had a right to vote. Their title is impeached on the naked ground that they are not enumerated on the tax list. This evidence is not sufficient to bar their right to vote, which depends not on the fact that they are actually taxed, but upon their liability to taxation. It devolves upon the appellants to disclose affirmatively such grounds of objection to one who has been admitted to vote, as, if taken for true, in the very words stated, will repel every presumption by which his claim might be sustained, by showing the absence of some essential qualification. This the appellants have failed to do, and the objection must be disregarded and the appeal dismissed. Per E. P. Smith, Deputy Superintendent, September 15, 1855.

Right of inhabitant to vote at school district meeting depends not on his being taxed, but on his liability to be taxed.

The right of an inhabitant to vote at a school district meeting does not depend on his being taxed, but on his liability to be taxed. The last completed assessment roll of the town controls trustees as to the valuation of property therein enumerated. If they ascertain that persons have been omitted who ought to be taxed, or that real estate has been omitted belonging

to persons who are taxed for other property, it is their duty to assess such persons and property, giving the proper notice. Their omission, however, does not affect the right of the persons overlooked, to vote or hold office. Per E. P. Smith, Deputy Superintendent, October 4, 1855. (*Letters*, vol. 2, p. 597.)

The fact that a man hires a house by the month or by the week, and pays the rent by his labor, and not in cash, does not change or take away his right to vote at school meetings. The rent of the house forms a part of the consideration paid for his labor. Per S. D. Barr, Deputy Superintendent, October 28, 1865. (*Letters*, vol. 4, p. 430.)

Chairman of board of education may vote.

The chairman of a board of education has a right to vote on all questions acted upon by the board, the same as any other member. Per V. M. Rice, Superintendent.

A husband cannot vote at district meeting because his wife owns real estate. He must have personal property of his own above the value of \$50. and possess all other necessary legal qualifications. Any one who possesses such qualifications, and owns or hires real estate in a district subject to taxation for school purposes, is a legal voter at school district meetings. No person who is entitled to vote at town meetings is a legal voter at school district meetings, unless he be a resident, and has real estate taxed for school purposes, or owns property above the value of \$50. "By a majority of the votes of those present" means "by the majority of those present and voting." No special or annual meeting can delay the collection of a tax voted at a previous meeting.

By the laws of this State a married woman may hold and dispose of real estate, entirely independent of the husband, and the husband has by law no property or interest in the wife's separate estate. Consequently the husband can acquire no right to vote at school district meetings simply because his wife owns or hires real estate. If, however, he has personal property of his own above the value of \$50, except such as is by law exempt from levy and sale on execution, he is a legal voter at such meetings, unless there should be certain other disqualifications, such as alienage, nonage, etc.

2. Any person possessing the proper qualifications of age, citizenship, etc., who owns or hires real property situated in the district, liable to taxation for school purposes, no matter to whom the same is taxed, is a legal voter at school district meetings.

3. No person who is entitled to vote at town meetings is a legal voter at school district meetings unless he is a resident, and owns or hires real estate, liable to taxation for school purposes, situated in such district, or unless he owns personal property exceeding \$50 in value, exclusive of such as is exempt from execution (or has permanently residing with him a child or children of school age, over one or more of whom shall have attended the district school for a period of at least eight weeks within one year preceding).

4. The words of the statute "by a majority of the votes of those present" have been in a number of instances construed to mean "by the majority of those present and voting." That is the only reasonable and consistent interpretation of the statute, and it is undoubtedly what the Legislature meant when the law was enacted.

5. If the vote at the adjourned annual meeting to raise \$2,400 to build a new school-house was legal and regular, then the action of the special meeting held January 2 was irregular. The special meeting was held too late to rescind the vote of the adjourned annual meeting, and no special nor annual meeting has the power legally to delay the collection of a tax voted at a previous meeting. The adjourned annual meeting voted, according to your statement, to raise \$1,200 immediately, and \$1,200 the first of May next, for the purpose of building a new school-house. The only way in which a tax may be levied and collected by installments is prescribed in section 19, title 7, chapter 555, Laws of 1864. (*See page 121, ante.*) Unless the meeting complies with that section, that tax list cannot be raised in such a manner. Your district did not



comply with the requirements of the section above named, and the tax which was voted cannot be raised by installments. The direction of the meeting that \$1,200 of the amount should not be collected till the first of May next is simply surplusage and is not binding upon the trustees, because the meeting had no power to give such a direction. The trustees should make out their tax list at once for the whole amount voted by the annual meeting, \$2,400. You will recollect, however, that before a tax exceeding \$800 (\$1,000), for the building of a school-house can be levied, the consent of the school commissioner must be obtained. (*See sec. 18, title 7, chapter 555, Laws of 1864.*) Per V. M. Rice, Superintendent, January 11, 1866. (*Letters, vol. 5, pp. 57, 58.*)

A negro of full age residing in your district, and owning or hiring real estate therein, is entitled to vote at your school district meetings, even though he has not real estate assessed at \$250. Per V. M. Rice, Superintendent, October 25, 1866. (*Letters, vol. 5, p. 662.*)

Deserters are not by law disqualified to vote at district meetings.

The Legislature of this State has not passed an act disfranchising deserters; consequently, if otherwise qualified, they are entitled to vote at school district meetings. Per S. D. Barr, Deputy Superintendent, November 28, 1866. (*Letters, vol. 5, p. 719.*)

Qualifications of certain office holders.

The Revised Statutes (*part 1, chapter 5, title 6, article 1*) provide that "no person shall be capable of holding a civil office, who, at the time of his election or appointment, shall not have attained the age of twenty-one years, and who shall not then be a citizen of the United States. A citizen is a person in the United States, native, or naturalized, who has the privilege of exercising the elective franchise, or the qualifications which enable him to vote for rulers, and to purchase and hold real estate." Per V. M. Rice, Superintendent, July 6, 1854. (*Letters, vol. 1, p. 206.*)

Moderator of a school meeting may vote.

A moderator of a school district meeting, being a legal voter, has the same right to vote as though he did not preside.

The same principle applies as with the speaker in our Assembly, the House of Representatives, the English House of Commons, and the president of the Senate, when he is a member of that body, etc.

Duty of moderator, when vote is challenged, to find if person offering it is a legal voter.

It is the duty of the moderator, when a vote is challenged, to ascertain whether the person offering it is a legal voter; and, if he fails to make the necessary investigation, he is negligent in his duty. Per V. M. Rice, Superintendent, December 2, 1854. (*Letters, vol. 1, p. 424.*)

The law does not declare the quantity of real estate necessary to entitle a man to vote at district meetings.

The law gives no limit to the value of the real estate which the resident of a school district must hold in order to entitle him to vote at district meetings. He may lease but a mere shanty, and pay the rent in money, work, taxes or improvements, still he is a voter, even though he may have been exempted from the payment of teachers' wages on account of indigence. Per V. M. Rice, Superintendent, January 30, 1855. (*Letters, vol. 2, p. 101.*)

# DIGEST OF DECISIONS

OF THE

## NEW YORK STATE COURTS,

### RELATING TO COMMON SCHOOLS.

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**DIVIDING DISTRICTS.** The town superintendent, with the supervisor and town clerk, annexed a part of district No. 14 to district No. 3, the residue of No. 14 being annexed to No. 13, and district No. 14 annulled. The trustees of Nos. 3 and 14 consented to these alterations, and notice of the alteration was given to the trustees of No. 13, who had not consented. *Held*, that the alteration took effect immediately as to the part annexed to No. 3, although the trustees of district No. 13 did not consent. (*Supreme Court*, 1846, *Williams v. Larkin*, 3 *Denio*, 114.)

**MEETING OUT OF THE DISTRICT.** Persons elected as trustees at a meeting held without the limits of the district, and who subsequently acted as such without objection, *held* to be officers *de facto*. (*Supreme Court*, 1858, *Myer v. Crispell*, 28 *Barb.*, 54.)

A tax was voted at a school meeting held within the district, on adjournment from a previous meeting which was held without the district; but it did not appear that at the original meeting any inhabitant was not notified, or complained then or afterward of the irregularity, or that there was any absentee from the adjourned meeting, or that any objection or complaint of the irregularity of the proceedings was made at the second meeting. *Held*, that the court might presume a waiver of the irregularity, if it were such, and a unanimous assent to the irregularity of the adjourned meeting. *Id.*

**ANNUAL MEETING.** The provision of 1 Revised Statutes, 480, section 74, requiring the clerk to post notices of annual meetings, is merely directory to him. If the meeting convenes at the time and place fixed at the previous annual meeting, it is enough, unless the omission to post notices was fraudulent. But the regularity of such meeting cannot be sustained on the mere ground that it was an adjourned meeting. (*Supreme Court*, 1844, *Marchant v. Langworthy*, 6 *Hill*, 646.)

This decision was affirmed in the court of errors in 1846, but no written opinions were rendered. (3 *Denio*, 526.)

A GENERAL NOTICE of the object of a special meeting is sufficient. *So held*, when, under a notice that the object of the meeting was for the purpose of buying or building a school-house, and transacting such other business, etc., the meeting proceeded to buy a school-house. (*Supreme Court*, 1846, *Williams v. Larkin*, 3 *Denio*, 114.)

**TRUSTEES NOT LIABLE FOR CLERK'S FRAUD.** Though the clerk fraudulently misrepresent the object of the meeting to some of the inhabitants, and so

prevent their attendance, the trustees, if they are not parties to the fraud, are not thereby rendered trespassers in assessing and levying a tax voted at the meeting. (*Supreme Court*, 1845, *Randall v. Smith*, 1 *Denio*, 214.)

**FIXING AMOUNT OF TAX.** The vote was to raise \$400 by tax, to build a school-house, and directed the trustees to sell the old building, and treat the avails of the sale as so much of the fund in hand. *Held*, valid. (*Supreme Court*, 1843, *Trumbull v. White*, 5 *Hill*, 46.)

A vote was passed authorizing the trustees to sell the old school-house and build a new one in its place, and the vote, by fixing the dimensions of the house, had the effect of restricting the expense to a sum below the amount of \$400, limited by law for the expense of a new house. *Held*, that under the act of 1841 (*Laws of 1841*, 238, *sec.* 14), providing that when the trustees of any school district are required, or authorized by law, or by a vote of their district, to incur any expense for such district, they may raise the amount thereof by tax in the same manner as if the definite sum to be raised had been voted. The trustees were authorized by such a vote to incur the expense. The statute should not be so construed as to confine its operation to small incidental expenses. (*Supreme Court*, 1847, *Ackerman v. Vail*, 4 *Denio*, 297.)

A school district voted "to raise, by tax on the district, a sum which, together with the amount that should arise from the sale of a school-house in district No. 4, should amount to the sum of \$315;" and, there being no power to sell the school-house mentioned, the trustees raised, by tax, the whole sum of \$315. *Held*, that the fair construction of the resolution was that, in the contingency of nothing being realized from the sale of the school-house, the trustees were authorized to raise the entire amount of \$315 by tax, and that the amount to be raised was sufficiently definite to satisfy the law. (5 *Hill*, 46; 4 *Denio*, 298; 3 *id.*, 115; *Supreme Court*, 1858, *Myers v. Crispell*, 28 *Barb.*, 54.)

**FIXING SITE.** The meeting cannot delegate their power to designate the site of a school-house. If they vote a tax to build a school-house, when the trustees shall think proper, the trustees are trespassers in proceeding to collect the tax. (18 *Johns.*, 351; 9 *Wend.*, 36; *Supreme Court*, 1837, *Benjamin v. Hull*, 17 *Wend.*, 437.)

*It seems* that it is not necessary to designate a site for the school-house before imposing a tax to build. *Id.* (*Williams v. Larkin*, 3 *Denio*, 114.)

**TAX BEFORE ACQUIRING TITLE.** It is no objection to the tax that the title to the property has not been acquired. (*Supreme Court*, *Williams v. Larkin*, 3 *Denio*, 114.)

**REPAIRS.** A vote of the district to raise a tax, directing that it shall not be levied until the repairs it is designed to pay for are made, held valid under 1 Revised Statutes, 478, section 61, subdivision 5. (*Supreme Court*, 1840, *Folsom v. Streeter*, 24 *Wend.*, 266.)

**INOPERATIVE VOTE.** When a tax voted became inoperative through the neglect of the trustees to assess it, *held*, that a subsequent meeting might vote another without any formal reconsideration. (*Supreme Court*, 1845, *Randall v. Smith*, 1 *Denio*, 214.)

**RESCINDING.** The district meeting cannot repeal a resolution imposing a tax after a part of it has been collected. (*Supreme Court*, 1848, *Smith v. Dillingham*, 4 *Barb.*, 25.)

Otherwise, *it seems*, if nothing beyond preparing the warrant and tax list has been done. (*Gule v. Mead*, 4 *Hill*, 109.)

**BUILDING COMMITTEE.** No power is given to the inhabitants to invest a building committee with authority to advertise, or make a contract for building a school-house, or to do any other act binding upon the trustees, without their assent. The inhabitants and trustees are alike dependent upon the statute for all their powers. (*Supreme Court*, *Sp. Term*, 1852, *People ex rel. Moon v. Banfield*, 6 *Howard's Pr.*, 437.)

**WHO ARE TAXABLE.** Under section 25 of the act of 1819, providing that every person owning or holding real estate lying within such district, who shall improve and occupy the same, by his agent or servant, a non-resident of

the district, owning land within it which he had leased to another, who occupies it, "does not improve and occupy it by his agent or servant" so as to be taxable. (*Supreme Court*, 1832, *Dubois v. Thorne*, 8 *Wend.*, 518; to contrary effect is *Myer v. Crispell*, 28 *Barb.*, 54.)

Under Laws of 1847, chapter 480, section 87, providing that every person owning or holding real property in any school district, who shall improve and occupy the same by his agent or servant, shall be considered a taxable inhabitant of such district, in respect to the liability of such property to taxation, a non-resident of the district who owns property and occupies it himself, not by an agent, etc., is taxable. The word "owner" was probably inadvertently omitted from the statute. (*Supreme Court*, 1858, *Myer v. Crispell*, 28 *Barb.*, 54; to the contrary effect is *Dubois v. Thorne*, 8 *Wend.*, 518.)

The plaintiff was an actual resident of school district No. 4, in which his farm lay, but he improved and occupied a lot of thirty-seven acres, belonging to him, which lay in district No. 6; but this lot was not a part of his farm, nor attached to it, nor adjoining. *Held*, that this lot of thirty-seven acres was properly taxed for school purposes in the sixth district. (*Supreme Court*, 1858, *Myer v. Crispell*, 28 *Barb.*, 54.)

WHAT ASSESSMENT ROLL IS TO BE FOLLOWED. The provision of 1 Revised Laws of 1813, page 262, section 8, requiring a district school tax to be raised by assessment, agreeably to the levy on which the town was taxed "the preceding year," is to be construed as if, instead of the preceding year, it had said the preceding tax list. (*Supreme Court*, 1815, *Ryder v. Cuddeback*, 12 *Johns.*, 412.)

The tax should be assessed according to the last assessment roll of the town, and a more recent roll, which has not been perfected, should be disregarded. (*Supreme Court*, 1831, *Alexander v. Hoyt*, 7 *Wend.*, 89. See 1 *Rev. Stat.* [3d ed.], 547, sec. 117.)

If the trustees assess property not valued in the last assessment roll of the town, it is their duty to give notice to the persons interested; but their omission to do so does not necessarily make them trespassers. (7 *Wend.*, 89; 11 *id.*, 90; *Supreme Court*, 1845, *Randall v. Smith*, 1 *Denio*, 214.)

LIQUIDATING AMOUNT. When the district has not voted any specific sum, the act of liquidating the true amount under the act of 1841, 238, section 14, and apportioning it, can be done only when the three trustees are together, although it may then be done by two of the three. (2 *Rev. Stat.*, 555, sec. 27; *Supreme Court*, 1847, *Lee v. Parry*, 4 *Denio*, 125.)

ASSESSMENT MUST BE AFTER THE VOTE. On the 7th of October a district meeting voted a tax, and in pursuance thereof an assessment was subsequently made, and a warrant to collect the tax made out, signed and dated. At a special meeting afterward, held on the 25th of November, the vote to raise the tax was repealed. At a third meeting on the 5th of December, the repealing vote was itself repealed. The trustees, deeming the original tax thus confirmed, renewed the warrants and enforced them. *Held*, that they were liable. Reviving the original vote for the tax did not revive the validity of the assessment and warrant. The whole proceedings must be construed as they would have been, if the original vote to lay the tax had passed on the 5th of December. The law plainly contemplates that the assessment shall be made after the tax shall have been voted. (*Court of Errors*, 1845, *Mead v. Gale*, 2 *Denio*, 232; affirming *S. C.*, 4 *Hill*, 109.)

ERRONEOUS APPORTIONMENT. Trustees of a school district in making out their tax list from the town assessment roll, act ministerially, and, if they take the roll which has not been completed instead of the last roll, and issue their warrant accordingly, they are liable as trespassers. (*Supreme Court*, 1831, *Alexander v. Hoyt*, 7 *Wend.*, 89; overruled in *Supreme Court*, 1855, *Hill v. Sellick*, 21 *Barb.*, 207, and cases there cited.)

The apportionment of the tax among the taxable inhabitants of a district is to a certain extent a judicial act, and if the trustees confine themselves within the limits of the statute, though they should err in point of law, or in judgment, they are not civilly nor criminally answerable if their motives are pure.

(8 Cow., 184; 1 Cai., 90; *Supreme Court*, 1833, *Easton v. Calendar*, 11 Wend., 90; approved in *Folsom v. Streeter*, 24 Wend., 266; *Randall v. Smith*, 1 Denio, 214.)

An error of judgment in including the collector's fees in the tax, or in omitting some of the taxable inhabitants in the list, does not render the trustees liable as trespassers. (*Supreme Court*, 1833, *Easton v. Calendar*, 11 Wend., 90.)

Though the trustees err in allowing compensation to a teacher for a longer time than she taught, the rate bill and warrant are not therefore void, but are a protection to the trustees and collector. (*Supreme Court*, 1851, *Finch v. Cleveland*, 10 Barb., 290.)

The trustees are not liable as trespassers for an error as to the basis of the apportionment, any more than for an error in the amount. (11 Wend., 90; 1 Denio, 214; 10 Barb., 290; *Supreme Court*, 1855, *Hill v. Sellick*, 21 Barb., 207.)

**EQUALIZATION.** Under Laws of 1847, 696, section 72, providing for an equalization of the apportionment, when the school district embraces a part of more than one town, upon a comparison of the valuations of real property upon the several assessment rolls of the towns with each other, so far as such district is concerned, and providing for the adjustment of the relative proportion of taxes that ought to be assessed upon the real property of the parts of such district so lying in different towns, the trustees are not liable for making their assessment in disregard of a determination made by town superintendents of common schools, unless it appears that a previous application upon the subject was made to the superintendents by the trustees of the district or persons liable to pay taxes upon real property therein. *Id.*

**COLLECTOR'S FEES.** In the apportionment the collector's percentage should not be included; he is directed by the warrant to collect that. (*Easton v. Calendar*, 11 Wend., 90.)

**NAMING THE PERSON ASSESSED.** Though when property is owned by an individual, his name, and not a mere description of him, should be inserted in the tax list and warrant (under 1 Revised Statutes, 481, 484, requiring it to contain the name of each person liable), yet, when the property of a decedent is in possession of the widow and heirs, it is sufficient to designate them in the list and warrant as "the widow and heirs" of the decedent. (*Supreme Court*, 1833, *Wheeler v. Anthony*, 10 Wend., 346.)

**TIME.** The provision of 1 Revised Statutes, 483, section 82, requiring a school district tax to be assessed, and the tax list to be made out within one month after the meeting at which the tax was voted, is directory merely in respect of time; and if it does not appear that there was a change in the taxable persons or property in the district, between the expiration of the month and the time the tax list was made out, the tax is valid. (Citing 3 Mass., 230; 6 Wend., 486; 2 Str., 1123; 7 Hill, 9; and distinguishing *Gale v. Mead*, 4 Hill, 109; *Supreme Court*, 1846, *Gale v. Mead*, 2 Denio, 160.)

The statute requiring the tax to be assessed, and the tax list therefor to be made out by the trustees, and a proper warrant attached thereto, within thirty days after the district meeting in which the tax shall have been voted, is merely directory as to time. It being for the benefit of the public, those acts may be done after the time specified in the statute has elapsed. (2 Denio, 160; *Supreme Court*, Sp. Term, 1855, *Thomas v. Clapp*, 20 Barb., 165.)

**ALTERATION.** When the tax has been levied and collected, the power of the trustee is ended. Though it has been recovered back from them, they cannot alter the tax list so as to collect a different sum. (*Supreme Court*, 1837, *Benjamin v. Hall*, 17 Wend., 437.)

**POWER TO ASSESS IS PERSONAL.** The authority which the trustees are required to administer in apportioning the tax is personal, and cannot be delegated. (3 Comst., 396.) One of three trustees cannot, after the other two have, without his presence, made an assessment or apportionment, ratify and adopt it by indorsing his approval, in the absence of the others. (*Supreme Court*, 1856, *Keeler v. Frost*, 22 Barb., 400.)

**REQUIREMENT OF THE WARRANT.** The provisions of Revised Statutes, 484, section 88, required that the warrant should command the collector to proceed

in the same manner as on executions issued by a justice of the peace. By the Laws of 1831, 248, section 2; 1832, 547, section 1, this provision was repealed, and it was required that the warrant should command the collector to proceed in the same manner as on warrants issued by the board of supervisors to the collectors of towns. *Held*, that a warrant issued in the old form, after the latter provision took effect, was void, and afforded no protection to the officer. (*Supreme Court*, 1837, *Clark v. Hullock*, 16 *Wend.*, 607.)

The provision of the act of 1831, directing warrants for taxes for erecting or repairing school-houses to be executed as warrants issued by the supervisors to town collectors, is to be applied to warrants for all school taxes; and whatever the tax, the collector is clothed with the powers of a town collector. Hence he may take the property of any person which is lawfully in the possession of the person liable to pay the tax. (*Supreme Court*, 1835, *Keeler v. Chichester*, 13 *Wend.*, 629.)

**WARRANT EXCEEDING TAX.** The warrant directed one dollar more than the amount of the tax voted to be collected. *Held*, that the plaintiff, suing in trespass for selling his property under it, as he did not take the objection at the trial, could not take it on error. The inclusion of the additional dollar might have been proper for expenses under the statute. (*Supreme Court*, 1846, *Williams v. Larkin*, 3 *Denio*, 114.)

**SIGNATURE.** That a renewal signed by only a majority of the trustees is sufficient. (*Folsom v. Sweeter*, 24 *Wend.*, 266.)

It is not material that all be present when the warrant is signed. The signing of the warrant is a ministerial duty. (*Supreme Court*, *Special Term*, 1855, *Thomas v. Clapp*, 20 *Barb.*, 165.)

**TIME OF.** That the warrant is not void because not signed thirty days before issue. (*Finch v. Cleveland*, 10 *Barb.*, 290.)

**A TRUSTEE WHO DOES NOT SIGN** a renewal of the warrant is not liable for its execution. (2 *Seld.*, 331; *Supreme Court*, *Special Term*, 1855, *Thomas v. Clapp*, 20 *Barb.*, 165.)

A renewal of the warrant is equivalent to a new warrant. (4 *Barb.*, 444; 3 *Hill*, 498; 4 *id.*, 109; 24 *Wend.*, 269; 17 *Barb.*, 145; *Supreme Court*, *Special Term*, 1855, *Thomas v. Clapp*, 20 *Barb.*, 165.)

Under the power given to the trustees of school districts, by 1 Revised Statutes, 478, section 102, to renew warrants for the collection from delinquents of such sum or sums of money as remain unpaid, they have the power to issue a new warrant for the same purpose. (24 *Wend.*, 269; 3 *Hill*, 498; *Supreme Court*, 1848, *Seaman v. Benson*, 4 *Barb.*, 444; *Special Term*, *Thomas v. Clapp*, 20 *id.*, 165.)

**APPROBATION OF SUPERINTENDENT.** Under section 13 of an act amendatory of the several acts relating to common schools, passed April 17, 1843, requiring the written approbation of the town superintendent whenever more than one renewal of the warrant should become necessary, one renewal of the warrant may be made by the trustees without the approbation of the town superintendent. (*Supreme Court*, 1848, *Seaman v. Benson*, 4 *Barb.*, 444.)

**LEVY ON FARM DIVIDED BY COUNTY LINE.** If a farm is divided by the division line between two districts, it is to be considered as lying in the district in which the dwelling is, and the collector may make levy upon any part of it, even though such part is in another county than the dwelling. (*Supreme Court*, 1832, *Wurd v. Aylesworth*, 9 *Wend.*, 281.)

**LIABILITY OF COLLECTOR.** A school district collector is bound to see that the trustees act within the scope of their legal duty; and, if they assess the property of a person not taxable, he is a trespasser in executing their warrant. (10 *Co. R.*, 76; 1 *H. Blackstone*, 68; 4 *Tunt.*, 634; *Supreme Court*, 1816, *Suydam v. Heys*, 13 *Johns.*, 444; but *Savacool v. Boughton*, 5 *Wend.*, 170.)

If the trustees have jurisdiction of the subject-matter, the collector is protected by a tax list and warrant, regular upon their face. (9 *Johns.*, 230; 3 *id.*, 474; 5 *Wend.*, 170; *Supreme Court*, 1851, *Alexander v. Hoyt*, 7 *Wend.*, 89.)

**DISTRAINING.** An officer who collects a district school tax is not subject to the provisions of 2 Revised Statutes, 428, sections 20-24, relating to the duties of

officers distraining on property, when no special provision is otherwise made. (*Supreme Court*, 1848, *Pangburn v. Smith*, 4 *Barb.*, 246.)

**OFFICERS—NEGLECT TO SERVE.** The penalty imposed by section 22, of the act of 1819, upon any clerk, trustee or collector, who should refuse to serve, or who, not having refused, should neglect the performance of the duties of his office, is not incurred by an individual instance of negligent or willful omission of duty by one who has entered on the general duties of the office. (*Supreme Court*, 1826, *Spafford v. Hood*, 6 *Cow.*, 478; followed in *Fitch v. Miller*, 13 *Wend.*, 66.)

The remedy which the inhabitants of a school district have against a trustee who neglects to discharge the duties of his office stated. (*Whitford v. Scott*, 14 *How. Pr.*, 302, 1857.) "A trustee of a school district, who refuses to discharge his duties as such, can be punished by indictment." (2 *Rev. Stat.*, 696, sec. 38; 2 *Hill*, 196; 1 *Denio*, 457; 3 *id.*, 381.) Such a refractory trustee is also liable to pay a penalty of \$10 for each refusal to perform any duty required by law (*Laws of 1847*, p. 696, sec. 79; *id.*, p. 713, sec. 145); and he may be removed from office by the State Superintendent of Public Instruction. (*Laws of 1849*, p. 537, sec. 15.)

**NEGLECT TO ACCOUNT.** Under 1 Revised Statutes 486, section 100, imposing a penalty of twenty-five dollars on every trustee who shall refuse or neglect to render an account, or to pay over any balance found in his hands, the penalty is a several penalty imposed on each defaulting trustee, and not a penalty against them jointly. (*Supreme Court*, 1845, *Marsh v. Shute*, 1 *Denio*, 230.)

**POWERS OF TRUSTEES TO REMOVE ENCROACHMENT.** A trustee of the district has the right to remove a fence wrongfully built upon the school lot. (*Supreme Court*, 1847, *Thayer v. Wright*, 4 *Denio*, 180.)

**POWER OF TRUSTEES TO CONTRACT.** The trustees of a school district are a quasi corporation, possessing power in certain cases, and for certain purposes, to bind their district and create a corporate liability, which will attach to their successors in their official capacity. They, therefore, have the power to liquidate the indebtedness of the district, *e. g.*, to a teacher, for wages earned by him as such, in the employment of the district, and, by giving a note therefor signed by them as trustees, to bind the district. When a note thus made expresses on its face that it is given on account of the wages of the payee, as teacher in the school district of which the makers are trustees, the payee, by accepting the note, admits this to be the true consideration, and therefore cannot hold the makers personally liable upon the note. (*Supreme Court*, 1836, *Horton v. Garrison*, 23 *Barb.*, 176.)

The trustees of a school district are a corporation for certain purposes, and may receive the note of a third person for money due to them in their corporate capacity; and till the note is impeached, or some defense made against it, they are under no obligation to show how they came by it. (*Supreme Court*, 1834, *Brewster v. Colwell*, 13 *Wend.*, 28.)

TWO TRUSTEES of a school district cannot act as such in the performance of their duties, except upon a meeting of all three, whether the third one refuses to act or not. (4 *Denio*, 125; *Supreme Court*, 6th district, 1857, *Whitford v. Scott*, 14 *How. Pr.*, 302; compare *Horton v. Garrison*, 23 *Barb.*, 126.)

TRUSTEES OF COMMON SCHOOLS sued by a teacher for services rendered by employment by one of them only, but with the knowledge and permission of the others, cannot defeat the recovery on the ground that the contract was invalid for not being made at a meeting of the three. (*Angell and Ames on Corp.*, 216, *Supreme Court*, 1853, *Fister v. La Rue*, 15 *Barb.*, 223; and compare *Finch v. Cleveland*, 10 *id.*, 290.)

CLERK ALSO COLLECTOR. The same person may be appointed clerk of the school district and collector at the same time, there being no prohibition in the act, and nothing incompatible in the two offices. (*Supreme Court*, 1819, *Howland v. Luce*, 16 *Johns.*, 135.)

ELECTION to fill vacancy caused by refusal to serve, sustained. (*Randall v. Smith*, 1 *Denio*, 214.)

The Superintendent of Common Schools has no general jurisdiction over money in the hands of school commissioners, and he has no authority to direct them to retain money which may thereafter be apportioned to school districts; and his order to such effect is not in itself a protection, unless it shows on its face that an appeal was pending before him. (*Supreme Court*, 1845, *Bennett v. Burch*, 1 *Denio*, 141.)

Ricitals in the Superintendent's order do not prove his jurisdiction. *Id.*

**ACTION ON BOND.** The town superintendent refused to examine a candidate as to her learning and ability, for the reason that he was satisfied her moral character was not good. The applicant appealed to the State Superintendent, who examined as to her moral character and decided that there was no objection to her on that score, and directed the town superintendent to examine her. The town superintendent examined her as to learning and ability, and offered her a certificate as to her qualifications on those points. *Held*, that it was all he could be required to do. By the appeal the question of moral character was disposed of, and the State Superintendent's decision on that question, together with the town superintendent's certificate of learning and ability, would entitle the applicant to teach. (*Supreme Court*, 1855, *People ex rel. Owen v. Masters*, 21 *Barb.*, 252.)

**ANNULLING TEACHER'S CERTIFICATE.** Under the Laws of 1847, § 690, section 37, the town superintendent cannot annul a teacher's certificate of competency, except on ten days' notice, to the teacher and the trustees of the district, of a hearing on the question. Notice of an intention to annul it is not an annulment. The order must be in writing. (*Supreme Court*, 1851, *Finch v. Cleveland*, 10 *Barb.*, 290.)

The city superintendent of common schools for the city and county of New York has power to annul a certificate granted to a teacher. (*Supreme Court*, 1853, *People ex rel. Melver v. Board of Education*, 17 *Barb.*, 299.)

**DISMISSAL.** That the trustees cannot dismiss a teacher without cause and against his consent, before the expiration of his contract. (*Finch v. Cleveland*, 10 *Barb.*, 290.)

**A SCHOOL-HOUSE** built by the contributions of the inhabitants was burned by the enemy, and compensation was subsequently awarded by the government, the village having been in the mean time organized as a school district. *Held*, that the money belonged to the school district, not to those who contributed to the building. (*Chancery*, 1837, *Potter v. Chapin*, 6 *Paige*, 639.)

**LIBRARIES.** When neither the inhabitants of the district nor the trustees have made any regulations or directions touching the rights of the inhabitants and the duties of the librarian, an action will not lie by an inhabitant against the librarian for refusing to her or to her children access to the library and permission to take books therefrom. The remedy is through the trustees, in whom by statute (1 *Rev. Stat.* [4th ed.], 906-908) the title to the library is vested. (*Supreme Court*, 1856, *Kennedy v. Ray*, 22 *Barb.*, 511.)

**APPEAL.** Under 1 Revised Statutes (2d edition), 481, section 124, as amended by the act of 1830, a controversy between the trustees of a district and one of the commissioners of the town, in regard to the paying by the latter of money in his hands to the former, is a subject of appeal to the Superintendent; and, if, instead of appealing, they sue, and have judgment, but the court certify that it appeared that he acted in good faith, he is exonerated from costs by the Laws of 1841, 242, section 33. (*Same Stat.*, 1 *Rev. Stat.* [3d ed.], 556, sec. 177; *Supreme Court*, 1846, *ex parte Bennett*, 3 *Denio*, 175.)

As to what decisions of a town superintendent may be reviewed by the State Superintendent of Public Instruction, see *People ex rel. Owen v. Masters*, 21 *Barb.*, 252. Title 12 of chapter 555, Laws of 1864, has removed all doubts about the right of the Superintendent of Public Instruction to hear and decide appeals upon all questions arising under all the acts relating to common schools.

**COLLECTION OF COSTS, ETC., OF SUITS AGAINST SCHOOL OFFICERS.** It is not necessary that an account of costs, etc., of school officers, under the second



section of chapter 172, of the Laws of 1847, should be submitted to the taxable inhabitants of the district previous to its being laid before the board of supervisors for its action; nor that a majority of the taxable inhabitants, previous to the action of the board of supervisors thereon, should determine that the amount of such costs, charges and expenses, should be ascertained by the board. Section 1 of that act, as amended by the Laws of 1849, chapter 388, is intended to apply to costs, etc., which a majority of the taxable inhabitants are willing to pay, and enables the district to levy and collect the tax. The other sections apply to the costs, etc., which the district ought to pay, but are unwilling to do so, and will not pay except upon compulsion.\* (*Supreme Court, Special Term, 1852, People ex rel. Gale v. Trustees of No. 13, 8 How. Pr., 125*; and see the opinion of the court on issuing the mandamus in this case, 6 *id.*, 332; approved in *People ex rel. Atkins v. Van Leuven, 8 How. Pr., 358*; \*but compare to the contrary *S. C., 10 id., 143*; and compare 10 *id.*, 468.)

The board of supervisors of a county have no authority to direct that the judgment in an action against the trustees individually, and not in their official capacity, shall be collected from the taxable inhabitants of the district, unless the latter have, under Laws of 1847, page 163, voted to indemnify the officers thus sued. (*Supreme Court Circuit, 1854, People ex rel. Atkins v. Snyder, 10 How. Pr., 143*.)

The jurisdiction of the board of supervisors to grant an order under Laws of 1847, 163; 1849, 545; does not depend upon any action of the inhabitants in the district. (*Supreme Court, 1854, People ex rel. Gale v. Green, 10 How. Pr., 468*.)

ASYLUM SOCIETIES. LAW OF 1848. The provision of chapter 75, of the Laws of 1848, 85, declaring that the orphan asylum societies of the city of Brooklyn shall participate in the distribution of the common school moneys raised in said city, is not to be construed to apply to the public moneys arising from the State fund. First, the language restricts the right to moneys raised in that city. Second, if the broader construction were given, the act would be unconstitutional. (*Supreme Court, 1851, People v. Board of Education of Brooklyn, 13 Barb., 400*.)

The dictum of the court in No. 2 does not prevent the execution of the act, chapter 261, Laws of 1850, page 500, permitting all the incorporated orphan asylums in the State to share in the distribution of the school moneys.

COMMON SCHOOL FUND. A statute (Laws of 1848, 85) authorizing an orphan asylum, whose trustees have a right to reject or admit applicants, to share in the revenues of the common school fund, is unconstitutional. Such an asylum is not a common school. (*Supreme Court, 1851, People v. Board of Education of Brooklyn, 13 Barb., 400*.)

TRUSTEES, ETC., OF SCHOOL DISTRICT. The principle that the official character of public school officers may be established by proving that they are generally reputed to be and have acted as such officers, without producing their commission or other evidence of their appointment, is applicable to the trustees or collector of a school district. (*Supreme Court, 1831, Ring v. Grout, 7 Wend., 341*; 1832, *McCoy v. Curtice, 9 id., 17*.)

The trustees of a school district, justifying as such, are not bound to prove that the district was duly organized; it is enough if they show that it had been, in fact, organized. (*Supreme Court, 1847, Stevens v. Neucomb, 4 Denio, 437*.)

A MINISTERIAL OFFICER is protected in the execution of the process of a court or officer of even limited jurisdiction, although the court or officer has acquired no jurisdiction of the person, if it appears on the face of the process that the subject-matter of the suit is within their jurisdiction, and nothing appears on the face of the process to show a want of jurisdiction in other respects. (Citing 2 *Strange, 710, 1002*; *Willis, 30*; 6 *T. R., 242, 653*; 9 *Johns., 229*; and disapproving, 3 *Cranch., 331*, and cases *supra*.) So held in case of an execution on a justice's judgment. (*Supreme Court, 1830, Savacool v. Boughton, 5 Wend., 170*; followed 1834, citing also 5 *Wend., 231, 240*; 9 *id., 17, 35*; 7 *id., 89*, and

\* NOTE. A different mode of enforcing the claims of school officers is provided by sections 6, 7, 8, 9, 10 and 11, title 13 of chapter 555, Laws of 1864. See *ante*, p. 229.

distinguishing, 6 *id.*, 438; *Coon v. Congden*, 12 *id.*, 495; 1853, *Henry v. Lowell*, 16 *Barb.*, 268; *Court of Appeals*, 1849, *Sheldon v. Van Buskirk*, 2 *N. Y.* [2 *Comst.*], 473; approved, *Court of Errors*, 1836 [distinguishing, 13 *Johns.*, 444, and 3 *Cranch.*, 331], *Parker v. Wulrod*, 16 *Wend.*, 514; affirming, *S. C.*, 13 *id.*, 296; *S. T.*, *Supreme Court*, 1834, *Parmelee v. Hitchcock*, 12 *id.*, 96.)

So held, of a justice who issued a process in compliance with the highway acts, to enforce a tax assessed on a person not legally liable to be taxed. (*Supreme Court* 1812, *Beach v. Furman*, 9 *Johns.*, 229, approved, and the adverse case of *Suydam v. Keys*, 13 *Johns.*, 444, disapproved in *Srvacool v. Boughton*, 5 *Wend.*, 170; and see *Chegary v. Jenkins*, 5 *N. Y.* [1 *Seld.*], 376.)

So, also, in the case of a tax collector, in collecting a tax upon property, which in fact was entitled to exemption from assessment. (*Court of Appeals*, *Chegary v. Jenkins*, 5 *N. Y.* [1 *Seld.*], 376.)

So held in the case of a tax collector, where the trustees' apportionment of the tax had been made upon a wrong principle. (*Supreme Court*, 1831, *Alexander v. Hoyt*, 7 *Wend.*, 89.)

So held, also, when the meeting which laid the tax was illegal. (*Supreme Court*, 1846, *Abbott v. York*, 2 *Denio*, 86; *S. T.*, 1832, *Reynolds v. Moon*, 9 *Wend.*, 35.)

So held in the case of a sheriff taking B's goods from A's possession, under a writ of replevin against A, specifying the goods. (*Supreme Court*, 1855, *Foster v. Pettibone*, 20 *Barb.*, 350, disapproving *Thompson v. Reynolds*, 14 *id.*, 506.)

This principle applies to every tribunal of special and limited jurisdiction, *e. g.*, the Superintendent of Common Schools, and this whether his determinations are termed orders or judgments. (*Supreme Court*, 1845, *Bennett v. Burch*, 1 *Denio*, 141.)

Also, when the objection was that the justice whose process was executed was only an officer *de facto*. (1830, *Wilcox v. Smith*, 5 *Wend.*, 231; *S. T.*, 1848, *Weeks v. Ellis*, 2 *Barb.*, 320.)

And in case of *de facto* trustees of a school district. (1832, *McCoy v. Curtice*, 9 *Wend.*, 17; *Reynolds v. Moon*, *id.*, 35.)

So, also, when the objection was, that the judgment on which the process issued had been satisfied. (1830, *McGuinty v. Herrick*, 5 *Wend.*, 240; 1831, *Lewis v. Palmer*, 6 *id.*, 367; *S. T.*, *Court of Appeals*, 1848, *Ruckman v. Cowell*, 1 *N. Y.* [1 *Comst.*], 505.)

In the case of a tax collector, nothing is necessary but a regular warrant. (*Court of Appeals*, 1849, *Seldon v. Van Buskirk*, 2 *N. Y.* [2 *Comst.*], 473; but compare *Van Rensselaer v. Whitbeck*, 7 *N. Y.* [3 *Seld.*], 517; reversing *S. T.*, 7 *Barb.*, 133.)

When the illegality of a tax appears on the face of the warrant, the collector who levies it is liable in trespass. (*Chancery*, 1834, *Bank of Utica v. City of Utica*, 4 *Paige*, 399; *Supreme Court*, 1837, *Clark v. Hallock*, 16 *Wend.*, 607; *S. T.* applied in the case of an attachment, *Court of Appeals*, 1851, *Castellanos v. Jones*, 5 *N. Y.* [1 *Seld.*], 164.)

If the warrant issued by the trustees of a school district for the collection of a school tax directs the collector to collect the amount of the assessments together with five cents on each dollar, contrary to the Laws of 1845, chapter 180, section 31, which direct the collector's fees not to be inserted in the warrant, this is an excess of authority in the trustees so far as relates to the fees, and the warrant is no protection to the collector. (*Supreme Court*, 1854, *Stroud v. Butler*, 18 *Barb.*, 327.)

**EXEMPT PROPERTY.** An officer is not protected by the execution in taking property which is exempt from execution. (*Supreme Court*, 1853, *Hoyt v. Van Alstyne*, 15 *Barb.*, 568.)

**TARDY EXECUTION.** If the collector of school taxes sells property after the expiration of the time limited in the warrant, he acts without authority and becomes a trespasser. (*Supreme Court*, 1854, *Stroud v. Butler*, 18 *Barb.*, 327; distinguishing, *Sheldon v. Van Buskirk*, 2 *N. Y.* [2 *Comst.*], 473.)

**IMPLIED POWER TO SUE.** When a public office is instituted by the Legislature, an implied authority is conferred on the officer, as incident to his office, to bring all suits which the proper and faithful discharge of his official duties

requires. *So held* of overseers of the poor. (*Supreme Court*, 1820, *Overseers of Pittstown v. Overseers of Plattsburgh*, 18 *Johns.*, 407; 1826, *Todd v. Birdsall*, 1 *Cow.*, 260; 1828, *Grant v. Funcher*, 5 *id.*, 300; 1830, *Armine v. Spencer*, 4 *Wend.*, 406; 1843, *Supervisor of Galway v. Stimson*, 4 *Hill*, 136. *So held* of the supervisor of a town. (*Supreme Court*, 1824, *Jansen v. Ostrander*, 1 *Cow.*, 670.)

**IMPLIED LIABILITY TO BE SUED.** For the same reason the overseers of the poor may be sued, and as well for liability incurred by their predecessors as one incurred by themselves. (*Supreme Court*, 1823, *Todd v. Birdsall*, 1 *Cow.*, 260; *S. T.*, 1829, *Palmer v. Vandeburgh*, 3 *Wend.*, 193.)

*So held* of trustees of school districts in an action for a teacher's wages, under a contract with their predecessors. (2 *Rev. Stat.*, 476, sec. 108; *Supreme Court*, 1831, *Silver v. Cummings*, 7 *Wend.*, 181; 1843, *Williams v. Keech*, 4 *Hill*, 168.)

Trustees of a school district who go out of office before the time of payment upon their contract arrives cannot be sued. *Id.*

**THE BOND OF A TOWN COLLECTOR**, taken in the name of the supervisor, passes to his successor, and should be sued in the name of the supervisor in office when the default happens; except that when the latter is dead, the suit should, under Laws of session 44, chapter 195, be in the name of his personal representatives. (*Supreme Court*, 1824, *Jansen v. Ostrander*, 1 *Cow.*, 670.)

**RESIDENCE.** A person, though he can have but one domicile, may have two residences. When one resided in a hired house in the city during the winter, and at his country seat, in another county, during the summer, and was assessed as a resident of the city first, and afterward as a resident at his country seat, *held*, that the first assessment was proper, and his remedy was to have objected to the second assessment. He could not, after paying the second assessment, resist the collection of the first. (*N. Y. Superior Court*, 1853, *Douglas v. Mayor*, etc., of *N. Y.*, 2 *Duer*, 110.)

Lands owned by a non-resident, but occupied, may be assessed either against the occupant or the non-resident owner. (*Court of Appeals*, 1852, *Van Rensselaer v. Cottrell*, *Seld.*, notes No. 1, 2, 3; affirming *S. C.*, 7 *Barb.*, 127.)

**NON-RESIDENTS.** Assessors are not authorized by the statute to insert in the assessment rolls the names of non-resident owners of real property. In the case of a non-resident, the land is to be assessed without naming the owner. Hence the collector cannot levy a tax upon any personal property of non-residents. The warrant does not authorize the seizure and sale of the property of persons not named, or whose names it is apparent from the face of the papers the assessors had no right to set down. (*Supreme Court*, *Sp. Term*, 1853, *N. Y. & Harlem R. R. Co. v. Lyon*, 16 *Barb.*, 651.)

**SCHOOL.** Buildings used for a private boarding-school are not exempt from taxation, by 1 Revised Statutes, 388, section 4, which exempts every building erected for the use of a college, incorporated academy, or other seminary of learning, and every building for public worship, every school-house, court-house and jail. The word "school-house" means only buildings for public schools; and the words "other seminary of learning" are to be understood as incorporations by force of the general words preceding. (*Appeals*, 1855, *Chegary v. Mayor*, etc., of *N. Y.*, 13 *N. Y.* [3 *Kern.*], 220; to similar effect *N. Y. Superior Court*, 1855, *Chegary v. Jenkins*, 3 *Sandf.*, 409.)

**TRUSTEES.** Under 1 Revised Statutes, 389-399, the individual property of an executor, administrator, guardian or trustee, may be taken for a tax imposed upon him in his representative capacity, where no property of the testator, intestate or *cestui que trust* can be found. It is a personal tax upon the executor, etc., in his special character as trustee. If there be joint executors, etc., each is taxable only for that portion of the trust property in his possession or under his control. (*Supreme Court*, 1830, *Williams v. Holden*, 4 *Wend.*, 223.)

**APPORTIONING SCHOOL TAX.** The authority which the trustees of a school district are required to administer, in apportioning a tax, involves the exercise of judgment and discretion, a power which cannot be delegated. (3 *N. Y.*, 396; *Supreme Court*, 1856, *Keeler v. Frost*, 22 *Barb.*, 400.)

**EXPIRATION OF WARRANT.** The powers of a school district collector, derived from a warrant issued for the collection of a tax or rate bill, cease with the expiration of the time limited in the warrant for collection, when his liability for not collecting, etc., becomes fixed, unless the warrant is renewed by the trustees. Without a renewal he is then a trespasser if he executes it. (*Supreme Court*, 1854, *Stroud v. Butler*, 18 *Barb.*, 327.)

**RENEWING.** Under 1 Revised Statutes, 484, sections 98, 102, which provides that the warrant to collect school taxes must be signed by the trustees or a majority, and that the trustees may renew it, a majority of the trustees may renew the warrant, and it may be renewed more than once. (*Supreme Court*, 1840, *Folsom v. Streeter*, 24 *Wend.*, 266.)

Under the power to renew a warrant, they may issue a new warrant. (*Supreme Court*, 1848, *Seaman v. Benson*, 4 *Barb.*, 444.)

When a warrant for the collection of a school tax is not issued until after its renewal, it becomes, by the renewal and delivery to the collector for collection, a valid and effectual process, for all purposes, as of the date of the renewal. (4 *Hill*, 109; 3 *id.*, 495; *Supreme Court*, 1853, *Parker v. Brown*, 17 *Barb.*, 145.)

**SEAL.** The trustees of a school district made out and issued their warrant without a seal, though a seal was required by the statute, and, after several renewals without seal, renewed it with seal. Held valid, as in effect a new warrant. (*Supreme Court*, 1842, *Smith v. Randall*, 3 *Hill*, 495; followed, 1845 in a further decision in *S. C.*, 1 *Denio*, 214; to similar effect, 1853, *Parker v. Brown*, 17 *Barb.*, 145.)

**REGULARITY OF TAX.** The question whether an individual banker was taxable in the town or ward in which the assessment was made cannot be raised to affect the validity of the tax warrant, regular on its face, as against the officer executing it; nor, when the process is against an individual bank, by the name in which it does business, which name is apparently that of a corporation, and such bank has a place of business within the jurisdiction of the assessors and of the officer executing the process, can its owner be permitted, as against the officer levying on the money or property of the bank, to claim that it is not a lawful corporation, and not taxable by its apparent corporate name. (5 *Wend.*, 170; 5 *N. Y.*, 376; *Supreme Court*, 1858, *Patchin v. Ritter*, 27 *Barb.*, 34.)

**SCHOOL TAX.** For two weeks after receiving the warrant of the trustees of a school district, the collector acts, under it, as the mere receiver of such taxes as shall be voluntarily paid to him. (*Laws of 1849*, 535, sec. 5.) If he assumes to enforce payment during that time, he is a trespasser. (*Supreme Court*, 1853, *Packer v. Brown*, 17 *Barb.*, 145.)

A tax can be said to be "collected" only when it has been paid by those on whose property it has been levied. (*N. Y. Com. Pleas, Sp. Term*, 1857, *Fitzpatrick v. Flagg*, 5 *Abbott's Pr.*, 213.)

**COLLECTOR.** The warrant is a protection to the collector, notwithstanding an error in the description of the lands assessed. (*Court of Appeals*, 1852, *Van Rensselaer v. Cottrell*, *Seld.*, notes No. 1, 2, 3.)

**CHANGING SITE.** Although, by *Laws of 1847*, chapter 480, section 73, the consent of the supervisor of the town is necessary to change the site of a school-house, it is not essential that such consent should have been given before the district meeting votes for such change. (17 *Wend.*, 439; *Supreme Court*, 1862, *Colton v. Beardsley*, 38 *Barb.*, 29.)

**POWER OF TRUSTEES IN RESPECT TO VACANCIES.** Under laws of 1851, chapter 386, section 10, subdivision 7, which authorizes the trustees, by a vote of a majority, to declare vacant the seat of any trustee who shall refuse to attend three stated meetings, the tender by a trustee of his resignation, with its acceptance by a majority, renders his seat vacant. (*N. Y. Com. Pleas*, 1863, *Gildersleeve v. Board of Education*, 17 *Abbott's Pr.*, 201.)

**POWER OF TRUSTEES IN RESPECT TO TEACHERS.** The power of the board of trustees to employ teachers under the same statute, coupled with the general authority to conduct and manage the schools, necessarily implies

the right to remove them; especially under a by-law of the board of education, regulating the proceedings on such removal. *Id.*

The power of the city superintendent, under the same statute, to annul the certificate given to any teacher, is distinct from the power of the trustees to remove the teacher. *Id.*

A certificate issued under the Laws of 1851, chapter 386, section 11, making it the duty of the city superintendent, under general regulations of the board of education, to examine into the qualifications of persons proposed as teachers of common schools in the city of New York, and to grant certificates, need only specify in which class of schools, and in what capacity, the person is qualified to teach. *Id.*

And when under this statute, and a by-law of the board of education, which required that the certificate given should express the grade of the teacher, the superintendent gave a certificate expressing the grade, and that the teacher was qualified as first assistant of a grammar school, *held*, that in the absence of evidence of any further regulation of the board, the teacher might lawfully serve as principal of the primary department of a grammar school. *Id.*

REMOVAL OF RESIDENCE. The office of a trustee of common schools in the city and county of New York becomes vacated by the removal of the incumbent from the county. (1 *Rev. Stat.*, 122; *N. Y. Com. Pleas*, 1863, *Gildersleeve v. Board of Education*, 17 *Abb. Pr.*, 201.)

HOW FAR PROCESS IS A PROTECTION. The insertion by trustees of a school district in their warrant for the collection of a school tax for the same, of a charge which they are not authorized to collect, without a vote of the district, does not render the warrant void except for the excess, and does not render them personally liable in damages for enforcing it, but they are liable only to an action for recovering back the excess. (*Supreme Court*, 1860, *Colton v. Beardsley*, 38 *Barb.*, 29.)

WARRANT. After a warrant for the collection of taxes had been used to collect an assessment, the assessment was detached from it, and a second assessment attached to it, and the warrant thus altered was delivered to the collector for collection. *Held*, that it was in legal effect a new warrant, and valid as such. (*Supreme Court*, 1860, *Colton v. Beardsley*, 38 *Barb.*, 29.)

TAXATION. The fact that a bank owns stocks, bonds and other securities of the United States, in amount exceeding its capital and surplus earnings, and that the total value of all its other personal property does not exceed the amount of the debts it owes, will not exempt it from taxation on account of personal property, on the ground that the capital of the bank is its surplus after paying all its debts, and that in the given case it will require all its personal property, other than its investments in United States securities, which are not taxable. (*The People ex rel. The Lockport City Bank v. The Board of Education*, *Supreme Court*, 1866, 46 *Barb.*, 588.)

The relator was a bank organized under the general banking law of 1838, with a capital of \$104,000. The cost of its real estate was about \$14,000, its surplus profits were about \$34,000 or \$35,000, and it had about \$203,500 of United States stocks or bonds, and had about \$65,000 of other stocks deposited as security with the bank department of the State, and about \$120,000 of United States stocks. It held and owned stocks and bonds, and other securities of the United States, to an amount exceeding its entire capital, including all its surplus profits, earnings and reserved funds; and the total value of all its other personal property and estate did not exceed the amount of debts due the bank. The bank was assessed, on account of its personal property or estate, the sum of \$102,400, being, as alleged, the whole amount of its capital stock paid in, and of all its surplus profits, or reserved funds, less ten per cent thereof, after deducting therefrom the value of its real estate. *Held*, that the relator, not having shown that any of its capital stock was invested in United States securities, or that it was assessed for any part of its property invested in such securities, was not entitled to a writ of *mandamus*, commanding the assessors to amend the assessment and the assessment roll, by striking therefrom the assessment of the bank, for or on account of personal property. *Id.*

The provision of the statute requiring the assessors to set down in the assessment roll the full value of all the taxable personal property of the person, after deducting the just debts owing by him, has no relation to the taxation of moneyed corporations.

The effect of the decision of the Supreme Court of the United States in the cases of *The People ex rel. The Bank of the Commonwealth v. The Commissioners of assessments, etc., in the City of New York*, and *The Same ex rel. The Bank of Commerce v. The Same* (2 Wal., 200), was neither more nor less than that the State cannot by any system of taxation assess and tax the securities of the United States, whether held or owned by corporations or individuals; nor can such holder or owners be taxed on account of such securities, or their value. *Id.*

That decision does not declare the act of the Legislature "in relation to the taxation of moneyed corporations and associations" passed April 29, 1863 (*Laws of 1863, p. 435*), to be unconstitutional. The effect of the decision, however, may be to annul the act, and render it inoperative in cases where the capital of the bank is wholly, or in part, invested in securities of the United States. In such cases the statute might, perhaps, be impracticable; or, possibly, our courts would hold the statute operative to the extent of the capital stock not invested in United States securities. *Id.*

The capital of the Exchange Bank at Lockport was \$150,000; the value of its real estate was \$7,000, and its surplus earnings, less than ten per cent, were \$41,151.16. Its State stocks and bonds and mortgages, deposited with the Superintendent of the Banking Department, amounted to \$18,300, and its United States stock so deposited amounted to \$32,000. Its other bonds and mortgages amounted to \$14,000. It held and owned, in all, \$72,000 in United States stocks. The total value of all its personal property and effects, exclusive of the stocks, bonds and other securities of the United States, held and owned by it, did not exceed the sum of \$112,000, over and above the debts due and owing by it. It was assessed on account of its personal property for \$165,980. *Held*, that the proper mode of assessment was adopted, under the act of the Legislature of 1863, relative to the taxation of moneyed corporations, etc., that is, by taking into the account the capital stock, the value of the real estate and the surplus earnings less the ten per cent, and that upon this principle the assessment was not excessive. (*The People ex rel. The Exchange Bank at Lockport v. The Board of Education, etc., Supreme Court, 1866, 46 Barb., 598.*)

*Held*, also, that it was incumbent upon the bank to show that the assessment included and operated upon a portion of its property invested in United States securities; and that, this not having been shown, no case was made for a *mandamus*, directing the assessors to correct the assessment roll for personal property, by reducing the amount therein, from \$165,980 to \$112,000. *Id.*

The supreme court will not interfere to review or overrule decisions of the Department of Public Instruction.

At the Monroe special term, June, 1867, E. Darwin Smith, Justice, delivered the opinion of the court, as follows:

This is an action under the Code, section 432, brought by the Attorney-General in the name of the people, upon the relation of Jerome Hill, to try the title of the defendant Collins to the office of trustee, and of the defendant Van Voorhees to the office of collector of school district No. 9, in the town of Victor, county of Ontario. Such action is a substitute for the writ of *quo warranto*, and may be brought where any person shall usurp, intrude into, or unlawfully hold or exercise any public office, civil or military, or any franchise within this State. The only issue which can be raised or tried in the action is the title to the office and of ouster as against the defendant, or of dismissal of the complaint if the people fail in the action. The question whether the relator or the defendant, Collins, is the legal trustee of said school district, has been presented to the Superintendent of Public Instruction, been passed upon by him, and expressly adjudicated in favor of the defendant, in a decision made by him on the 18th day of February last. This decision covers the whole question

which can be tried and decided in this action, and the question presented to this court is whether this action will lie to review such decision of the Superintendent, notwithstanding such decision.

I have no doubt this decision is binding and conclusive upon these parties, and that this action cannot be maintained. The Legislature clearly intended that all questions relating to the holding of school district meetings, and any and all official acts of school officers, trustees, commissioners, supervisors or others relating to the conduct of common schools, or concerning any matter, act or duty required or performed under the law providing for the organization and maintenance of common schools or any law relating or pertaining thereto, should or might be presented on appeal to the Superintendent of Public Instruction, and should be decided by him; and, when so decided, the act; section 1, title 12, of the act of 1864, relating to public instruction, Session Laws, page 1244, expressly declares that "the decision of such Superintendent shall be final and conclusive, and not subject to question or review in any place or court whatever." I have no doubt this is a valid act, and that the Legislature had ample power to pass it. It was designed to save and prevent litigation in the courts in respect to the many questions of dispute constantly arising in the school districts of the State in respect to school officers and the conduct of such officers in the management and control of the affairs of the common schools. It seems to me that it was a wise and judicious provision to settle school controversies promptly and summarily, and save districts and district officers the trouble, vexation, strife and expense of litigation in the courts. But, if it were otherwise, the courts are bound to obey the law and refrain from any review of the proceedings or decisions of the Superintendent. The Superintendent has decided that the defendant is the lawful trustee of this school district, and that decision, I think, must end this controversy. His decision is final, and the parties must submit to it. Such decision disposes of all the questions which can be litigated, and leads to the conclusion that the injunction must be dissolved, and it is dissolved, with costs to abide the event.

# LIST OF THE TITLES OF

## ALL THE GENERAL AND SPECIAL ACTS OF NEW YORK

### RELATING TO SCHOOLS AND EDUCATION.

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[THE following list, alphabetically arranged, is supposed to contain the titles of all acts relating to schools and education passed by the Legislature of this State. A few, which were merely appropriation bills, have been purposely omitted, and perhaps some others have been overlooked.]

#### A.

An act to confirm the proceedings of the joint school district, composed of district No. 5, in Adams, and district No. 6, in the town of Henderson, in the county of Jefferson. Passed April 1, 1846. Sess. Laws, p. 52.

An act to incorporate the Albany Lancaster school society. Passed May 26, 1812. Sess. Laws (Webster & Skinner's ed.), p. 390. Section 10 required the city to pay \$500 a year toward the support of the school.

An act to amend the act entitled "An act to incorporate the Albany Lancaster school society." Passed February 12, 1813. Sess. Laws, p. 21. Repealed the sixth section, and changed the sum entitling a person to a scholarship to \$25.

An act to incorporate a school for people of color in the city of Albany. Passed April 12, 1816. Sess. Laws, p. 83. The act incorporates the "Albany school for educating people of color," vests in the trustees the title of a lot of land, and permits them to hold real and personal estate with an income not to exceed \$1,000 annually.

An act relating to common schools in the city of Albany. Passed April 17, 1830. Sess. Laws, p. 260. Authorizes the election of commissioners of common schools in the several wards of the city east of Perry street, and the organization of a board, with power to organize districts and appoint trustees. The school moneys were to be apportioned to the city and to the county separately. The Lancaster schools were to share in its distribution. The part of the city west of Perry street formed a separate district.

An act to amend an act entitled "An act relating to common schools in the city of Albany." Passed January 25, 1831. Authorizes a tax on district No. 6, to build a school-house.

An act to amend an act entitled "An act relating to common schools in the city of Albany." Passed April 11, 1831. Sess. Laws, p. 153. Authorizing taxes to build school-houses.

An act relating to the second school district in the city of Albany. Passed April 25, 1832. Sess. Laws, p. 472. Authorizes the trustees to erect a school-house, mortgage the lot and building, and to exact ten per cent on each rate bill for tuition, to pay the principal and interest.

An act further to amend the act entitled "An act to amend the several acts relating to the city of Albany, and to combine the same into one act," passed April 13, 1826. Passed May 1, 1834. Sess. Laws, p. 416. Section 3 repeals the thirteenth section of said act, giving \$500 yearly to the Lancaster school. Section 13 continues in force the act of April 11, 1831, relating to common schools in the city of Albany, for five years from May 1, 1834.

An act to provide for the erection of district school buildings in each district east of Perry street in the city of Albany. Passed April 20, 1837. Sess. Laws, p. 205. Raises by tax \$25,000, in ten annual installments, for building school-houses, and authorizes the loaning of that sum to the city from the capital of the common school fund.

An act to amend an act entitled "An act relating to common schools in the city of Albany." Passed May 9, 1837. Sess. Laws, p. 406. The first two sections relate to the



raising and apportionment of taxes for the support of schools. The third and fourth sections forbid districts east of Perry street from voting taxes, or disposing of district property, and required them to keep a record of proceedings of school meetings.

An act relative to the common schools in the city of Albany. Passed May 8, 1837. Sess. Laws, p. 390. Apportions \$100 to each school east of Perry street, and \$25 to each district west of said street, for repairs and contingent expenses; and directs school moneys to be apportioned to the Albany orphan asylum for the payment of the wages of teachers.

An act amendatory of the several acts relating to district schools in the city of Albany. Passed April 8, 1844. Sess. Laws, p. 115.

An act to amend an act relating to the district schools of the city of Albany, passed April 8, 1844. Passed May 13, 1845. Sess. Laws, p. 265.

An act to authorize the city of Albany to raise money by tax to build a district school-house. Passed April 12, 1848. Sess. Laws, p. 482.

An act authorizing an additional sum of money to be raised in the city of Albany, for school purposes. Passed April 17, 1852. Sess. Laws, p. 676.

An act in relation to common schools in the city of Albany, west of Perry street. Passed June 13, 1853. Sess. Laws, p. 1037.

An act amendatory of the several acts relating to district schools in the city of Albany. Passed April 14, 1855. Sess. Laws, p. 951.

An act to create a board of public instruction in the city of Albany; to establish free schools therein, and amendatory of the several acts relating to the district schools in said city. Passed April 7, 1866. Sess. Laws, p. 986.

An act to amend an act entitled "An act to create a board of public instruction in the city of Albany; to establish free schools therein, and amendatory of the several acts relating to the district schools in said city," passed April 7, 1866. Passed January 31, 1867. Sess. Laws, p. 37, vol. 1.

An act to authorize the inhabitants of joint school district No. 5, in the town of Attica, county of Wyoming, and town of Alexander, county of Genesee, to raise money. Passed April 2, 1849. Sess. Laws, p. 286.

An act to divide the town of Alfred, in the county of Allegany. Passed March 16, 1821. Sess. Laws, p. 94. Erects the towns of Independence and Almond, and directs the moneys derived from the sales of the gospel and school lots to be divided.

An act to authorize the trustees of school district No. 3, in the town of Amherst, county of Erie, to raise certain moneys for school purposes. Passed April 5, 1866. Sess. Laws, p. 850.

An act for the collection of a school district tax in joint district No. 3, in towns of Ashford and East Otto, in Cattaraugus county. Passed April 10, 1857. Sess. Laws, vol. 1, p. 699.

An act in relation to school district No. 12, in the town of Attica. Passed April 3, 1829. Sess. Laws, p. 176. Authorizes apportionment of moneys to district.

An act authorizing the application of the common school moneys in the village of Athens and in the city of Hudson to the education of poor children. Passed April 15, 1814. Sess. Laws, p. 244. This law modified the general law, and set apart the public money in Athens and Hudson for the benefit of the poor exclusively.

An act to incorporate the city of Auburn. Passed March 21, 1848. Sess. Laws, p. 119. Title 8 of this act related to schools.

An act to regulate the free schools in the city of Auburn. Passed April 10, 1850. Sess. Laws, p. 751.

An act to amend an act entitled "An act to regulate the free schools in the city of Auburn," passed April 10, 1850. Passed March 23, 1857. Sess. Laws, vol. 1, p. 365.

An act to amend an act to regulate free schools in the city of Auburn, passed April 10, 1850. Passed March 19, 1866. Sess. Laws, p. 349.

An act to amend an act entitled "An act to amend an act to regulate free schools in the city of Auburn," passed April 10, 1850, passed March 23, 1857. Passed February 19, 1864. Sess. Laws, p. 33.

An act to incorporate the Cayuga asylum for destitute children. Passed April 10, 1852. Sess. Laws, p. 279. Section 12 made the school kept in this asylum a separate district school, and gave it a distributive share in the public money and in the school money raised in the city.

An act to authorize the mayor and common council of the city of Auburn to raise money by tax to pay for building a school-house in district No. 5. Passed April 14, 1855. Sess. Laws, p. 955. Authorizes a tax of \$250.

An act to authorize the trustees of school district No. 7, in the town of Augusta, Oneida county, to convey real estate. Passed April 21, 1865. Sess. Laws, p. 938.

An act authorizing the trustees of school district No. 7, town of Augusta, Oneida county, to convey a certain lot of land. Passed March 16, 1866. Sess. Laws, p. 321.

An act for the relief of Stephen Sprague, Orange Spaulding and Robert R. Cowan, late trustees of school district No. 12, in the town of Aurelius. Passed March 22, 1833. Sess. Laws, p. 96. Authorizes a tax to pay the costs of a suit against them.

## B.

An act to authorize the board of education of the Baldwinsville union school district to borrow money. Passed April 19, 1867. Sess. Laws, p. 1125, vol. 1.

An act in relation to school district No. 3, in the town of Batavia. Passed April 25, 1839. Sess. Laws, p. 210.

An act to authorize the inhabitants of consolidated school district No. 2, in the village of Batavia, Genesee county, to raise money. Passed March 29, 1847. Sess. Laws, p. 45.

An act to enable the trustees of consolidated school district No. 2, in Batavia, to levy a tax for the support of a school therein. Passed June 25, 1851. Sess. Laws, p. 566.

An act to enable the trustees of school district No. 7, in the town of Bath, to hold by deed a certain lot therein mentioned. Passed March 31, 1815. Authorizes certain persons to convey, by deed, fifty acres of land to the trustees of district No. 7, to be held in trust for the benefit of the common schools in the settlement known as Pleasant Valley.

An act to authorize the trustees of union school district No. 5, in the village of Bath, in the county of Steuben, to raise money by tax. Passed January 24, 1851. Sess. Laws, p. 10.

An act in relation to schools in the village of Binghamton. Passed April 19, 1861. Sess. Laws, p. 752.

An act to amend an act entitled "An act in relation to schools in the village of Binghamton," passed April 19, 1861. Passed April 25, 1864. Sess. Laws, p. 843.

An act to amend chapter 322, of the Laws of 1861, entitled "An act in relation to schools in the village of Binghamton." Passed April 14, 1866. Sess. Laws, p. 1250.

An act to incorporate the city of Binghamton. Passed April 9, 1867. Sess. Laws, p. 588, vol. 1. Title 11, p. 645, relates to common schools.

An act in relation to district No. 1, in the town of Booneville. Passed May 5, 1837. Sess. Laws, p. 344. Authorizes the sale of site, the purchase of a new site and the erection of a school-house, and the raising of a tax to defray the cost.

An act to authorize school district No. 11, in the town of Brasher, in the county of St. Lawrence, to sell their lot. Passed September 20, 1847. Sess. Laws, p. 419.

An act relative to the common schools of the city of Brooklyn. Passed April 2, 1836. Sess. Laws, p. 136. Authorizes taxation for the building of school-houses.

An act relative to school district No. 6, in the city of Brooklyn. Passed April 3, 1837. Sess. Laws, p. 120. Confirms the proceedings of a school meeting in changing the site, and the sale of a school-house.

An act relative to common schools in the city of Brooklyn. Passed March 23, 1843. Sess. Laws, p. 39.

An act further to amend an act entitled "An act relating to common schools for the city of Brooklyn," passed May 23, 1843. Passed April 6, 1848. Sess. Laws, p. 298.

An act to amend an act entitled "An act relating to common schools for the city of Brooklyn." Passed March 23, 1844. Sess. Laws, p. 514.

An act to enlarge the act entitled "An act relative to common schools in the city of Brooklyn." Passed March 23, 1843. Passed May 14, 1845. Sess. Laws, p. 327. Authorizes the formation of school districts for colored children.

An act to appoint a superintendent of common schools of the city of Brooklyn. Passed January 28, 1848. Sess. Laws, p. 14.

An act to reorganize and regulate the common schools and the board of education in the city of Brooklyn. Passed April 4, 1850. Sess. Laws, p. 237.

An act to amend an act to reorganize and regulate the common schools and the board of education in the city of Brooklyn, passed April 4, 1850. Passed March 17, 1857. Sess. Laws, vol. 1, p. 237.

An act to authorize the board of education of the city of Brooklyn to sell a certain school lot. Passed April 10, 1850. Sess. Laws, p. 771.

An act to amend "An act to revise and amend the several acts relating to the city of Brooklyn," passed April 4, 1850. Passed June 19, 1851. Sess. Laws, p. 442. Section 15 relates to the money to be raised by tax for the support of schools.

An act to consolidate the cities of Brooklyn and Williamsburgh and the town of Bushwick into one municipal government, and to incorporate the same. Passed April 17, 1854. Sess. Laws, p. 829. Section 13, title 11, relates to schools and the board of education.

An act to amend an act entitled "An act to consolidate the cities of Brooklyn and Williamsburgh and the town of Bushwick into one municipal government, and to incorporate the same," passed April 17, 1854. Passed April 6, 1857. Section 11 authorizes the board of education to maintain a normal school.

An act to amend an act entitled "An act to reorganize and regulate the common schools and the board of education in the city of Brooklyn," passed April 4, 1850. Passed March 7, 1862. Sess. Laws, p. 84.

An act to authorize the appointment of an assistant superintendent of common schools in the city of Brooklyn. Passed April 3, 1866. Sess. Laws, p. 803.

An act for the relief of common schools in the city of Brooklyn. Passed April 11, 1866. Sess. Laws, p. 1118.

An act to authorize the city of Brooklyn to borrow money, upon certificates of indebtedness, for the purchase of school sites and the building of school-houses. Passed April 23, 1867. Sess. Laws, p. 1527, vol. 2.

An act to provide for the existing deficiency in moneys applicable to the support of common schools in the city of Brooklyn. Passed March 30, 1867. Sess. Laws, p. 308, vol. 1.

An act confirming the reports of the trustees of certain school districts in the county of Broome. Passed April 13, 1839. Sess. Laws, p. 222.

An act in relation to school district No. 1, in the town of Brownville, in the county of Jefferson. Passed May 4, 1844. Sess. Laws, p. 391.

An act relative to district No. 8, in the town of Brutus. Passed January 31, 1846. Sess. Laws, p. 6.

An act to provide for free schools in the town of Bushwick. Passed October 16, 1847. Sess. Laws, p. 427.

An act in relation to schools in the town of Bushwick, Kings county. Passed April 1, 1852. Sess. Laws, p. 158.

An act to amend an act entitled "An act to provide for free schools in the town of Bushwick," passed October 16, 1847. Passed June 18, 1853. Sess. Laws, p. 816.

An act further to amend an act entitled "An act to incorporate the city of Buffalo," passed April 20, 1832. Passed March 12, 1838. Sess. Laws, p. 37.

An act to amend an act entitled "An act to incorporate the city of Buffalo." Passed May 11, 1837. Sess. Laws, p. 437.

An act further to amend an act entitled "An act to incorporate the city of Buffalo," passed April 20, 1832. Passed May 12, 1838. Sess. Laws, p. 37.

An act further to amend the charter of the city of Buffalo. Passed February 14, 1839. Sess. Laws, p. 18. Section 22 of this act made the city schools free to all children under sixteen years of age.

An act to consolidate and amend the act to incorporate the city of Buffalo, passed April 20, 1832, and the various acts amendatory thereof. Passed April 7, 1843. Sess. Laws, p. 116. Title 9 relates to "common and other schools." The common schools are free to all *white* children under sixteen years of age, and free schools are provided for all colored children.

An act to amend an act entitled "An act to consolidate and amend the act to incorporate the city of Buffalo," passed April 20, 1832, and the various acts amendatory thereof, passed April 17, 1843. Passed March 29, 1849. Sess. Laws, p. 224.

An act to revise the charter of the city of Buffalo, and to enlarge its boundaries. Passed April 13, 1853. Sess. Laws, p. 447. Title six relates to schools. They were made free to all *white* children over the age of five and under the age of eighteen.

An act to amend an act entitled "An act to revise the charter of the city of Buffalo, and to enlarge its boundaries," passed April 13, 1853. Passed April 4, 1856. Section 13 relates to taxation in school districts.

An act to amend an act entitled "An act to revise the charter of the city of Buffalo, and to enlarge its boundaries," passed April 13, 1853, and the several acts amendatory thereof. Passed April 16, 1861. Sess. Laws, p. 620.

An act to incorporate the Buffalo juvenile asylum. Passed April 7, 1856. Sess. Laws, p. 175. Section 30, p. 177, permits the schools of the asylum to share in the school fund.

### C.

An act to authorize the erection of a school-house in the village of Canandaigua, and for the maintenance of a school for colored children, to be kept therein. Passed April 14, 1852. Sess. Laws, p. 430.

An act to repeal the act entitled "An act to authorize the erection of a school-house in the village of Canandaigua, and for the maintenance of a school for colored children, to be kept therein," passed April 14, 1852; and to authorize the trustees of said village to sell the said school-house and the lot on which it stands. Passed April 8, 1859. Sess. Laws, p. 447.

An act to authorize the trustees of school district No. 3, in the town of Castleton, and county of Richmond, to mortgage the property belonging to the district for certain purposes. Passed June 30, 1853. Sess. Laws, p. 950.

An act to establish free schools in district No. 1, in the towns of Castleton and Southfield, in the county of Richmond. Passed April 10, 1855. Sess. Laws, p. 471.

An act to enlarge the powers of school districts Nos. 2, 3, 5 and 7, in the town of Castleton, in the county of Richmond. Passed April 14, 1855. Sess. Laws, p. 942.

An act to amend an act entitled "An act to establish free schools in district No. 1, in the towns of Castleton and Southfield, in the county of Richmond," passed April 10, 1855. Passed April 1, 1856. Sess. Laws, p. 103.

An act for the collection of unpaid taxes in school district No. 1, in the towns of Castleton and Southfield, Richmond county. Passed March 31, 1857. Sess. Laws, vol. 1, p. 453.

An act to amend an act entitled "An act to establish free schools in district No. 1, in the towns of Castleton and Southfield, in the county of Richmond," passed April 10, 1855. Passed April 2, 1864. Sess. Laws, p. 200.

An act to incorporate the Catskill Lancaster school society. Passed March 14, 1817. Sess. Laws, p. 77. Section 7 authorizes the society to receive the school moneys apportioned to district No. 1.

An act to repeal "An act to incorporate the Catskill Lancaster school society," passed March 14, 1817, and for other purposes. Passed April 20, 1830. Sess. Laws, p. 332. Section 2 makes the village of Poughkeepsie a permanent school district, and requires the public moneys to be paid to the trustees of the Poughkeepsie Lancaster school society.

An act relative to the town of Cameron, in the county of Steuben. Passed April 18, 1831. Sess. Laws, p. 197. Directs the overseers of the poor to apply \$50 to the support of schools, and, from time to time thereafter, to pay the commissioners of common schools such sums as the inhabitants, or a majority of them, at any annual town meeting, should direct.

An act in relation to joint school district No. 1, of the towns of Camillus and Geddes, in the county of Onondaga. Passed April 13, 1852. Sess. Laws, p. 378.

An act to levy a tax in joint school district No. 7, in the towns of Canton and DeKalb, in the county of St. Lawrence, to reimburse Sylvanus Styles and Theodorus Frisbie certain expenses incurred in behalf of said district. Passed May 7, 1847. Sess. Laws, p. 234.

An act for the relief of the trustees of school district No. 10, in the town of Chatham, in the county of Columbia. Passed April 11, 1848. Sess. Laws, p. 338.

An act authorizing the trustees of school district No. 12, in the town of Chenango, to sell a school lot. Passed February 19, 1834. Sess. Laws, p. 15.

An act to authorize the trustees of school district No. 3, in the town of Chenango, in the county of Broome, to sell and convey their school lot. Passed May 5, 1834. Sess. Laws, p. 506.

An act to establish a free school in district No. 3, in the town of Cherry Valley. Passed April 11, 1853. Sess. Laws, p. 305.

An act to confirm the official acts of Hiram W. Jackson, of the town of China, as superintendent of common schools. Passed March 26, 1849. Sess. Laws, p. 189.

An act to further amend the act entitled "An act to incorporate the trustees of Clarkson high school, and to provide for the management and support of such school," passed April 6, 1859. Passed April 11, 1866. Sess. Laws, p. 1119.

An act to amend the first section of an act passed April 6, 1859, entitled "An act to incorporate the trustees of Clarkson high school, and to provide for the management and support of such school." Passed February 18, 1860. Sess. Laws, p. 47.

An act for building a school-house and maintaining a school in the town of Clermont. Passed March 27, 1791, Sess. Laws (Webster & Skinner's ed.), vol. 2, p. 248. Authorizes the appropriation of moneys in the hands of the overseers of the poor, from excise and fines, for the erection of a school-house and for maintaining a school-master in said town.

An act to authorize and require the trustees of joint school district No. 14, of Clay and Cicero, to levy and collect a tax for the relief of Hiram M. Wright and Joseph Rector. Passed April 7, 1845. Sess. Laws, p. 33.

An act for the relief of George Kill. Passed May 26, 1853. Sess. Laws, p. 570. Refers to district No. 10, in the towns of Clay and Lysander.

An act to incorporate the Clyde high school. Passed April 24, 1834. Sess. Laws, p. 221. Erects districts Nos. 14 and 17 into a permanent school district by the name of the "Clyde high school."

An act to amend an act entitled "An act to incorporate the Clyde high school," passed April 24, 1834, and for other purposes. Passed April 12, 1842. Sess. Laws, p. 328.

An act to reduce the number of trustees of Clyde high school, and for other purposes concerning said school. Passed November 30, 1847. Sess. Laws, p. 509.

An act relating to the Clyde high school, in the town of Clyde. Passed April 14, 1858. Sess. Laws, p. 313.

An act to authorize the trustees of school district No. 5, Cobleskill, Schoharie county, to sell real estate. Passed March 30, 1866. Sess. Laws, p. 547.

An act to establish free schools in the village of Cohoes. Passed April 10, 1850. Sess. Laws, p. 740.

An act entitled an act to amend the charter of the village of Cohoes. Passed April 12, 1855. Sess. Laws, p. 631. Sections 49 to 76 relate to schools.

An act to amend an act entitled "An act to amend the charter of the village of Cohoes," passed April 12, 1855. Passed April 15, 1857. Sess. Laws, p. 307, vol. 2.

An act confirming the acts of the commissioners of common schools, in the division of the school district composed of parts of the towns of Colesville and Windsor, in the county of Broome. Passed April 16, 1834. Sess. Laws, p. 147.

An act in relation to school district No. 7, of the town of Cortlandt, county of Westchester, empowering the trustees of said district to extend the time for the payment of loan, and authorizing them to sell part of school site. Passed April 10, 1860. Sess. Laws, p. 373.

An act to legalize the formation of school district No. 18, in the town of Cortlandt, Westchester county. Passed April 18, 1861. Sess. Laws, p. 751.

An act authorizing the commissioners of common schools in the town of Covert, in the county of Seneca, to alter the time of apportioning the public school money to the trustees of the several school districts of said town. Passed May 1, 1829. Sess. Laws, p. 518. Requires them to meet on or before the first Tuesday in June.

An act to authorize the trustees of school district No. 5, Cobleskill, Schoharie county, to sell real estate. Passed March 30, 1866. Sess. Laws, vol. 1, p. 547.

An act to make the town of Cambria a part of the first school commissioner's district of Niagara county. Passed March 28, 1867. Sess. Laws, vol. 1, p. 270.

An act to make the town of Chester a part of the second school commissioner's district of Orange county. Passed February 15, 1867. Sess. Laws, vol. 1, p. 70.

An act for the collection of unpaid taxes in school district No. 1, in the towns of Castleton and Southfield, Richmond county. Passed March 31, 1857. Sess. Laws, vol. 1, p. 453.

## D.

An act for the more easy pleading in certain suits, and for the relief of school districts Nos. 6 and 14, in the town of Deerfield, and county of Oneida. Passed March 30, 1820. Sess. Laws, p. 106. Authorizes districts to plead general issue, and gives double costs to defendants in case of nonsuit or discontinuance.

An act in regard to union free school district No. 1, in the town of Deer Park, and to enlarge its boundaries, and authorize the board of education thereof to raise money to purchase sites, and to build or purchase school-houses. Passed April 14, 1866. Sess. Laws, p. 1248.

An act to amend an act entitled "An act in regard to union free school district No. 1, in the town of Deerpark, and to enlarge its boundaries, and authorize the board of education thereof to raise money to purchase sites, and to build or purchase school-houses," passed April 14, 1866. Passed April 23, 1867. Sess. Laws, vol. 2, p. 1536.

An act authorizing the election of three trustees and a district clerk in school district No. 16, located in the village of Delhi. Passed February 26, 1851. Sess. Laws, p. 23.

An act to provide for the erection of a new school-house in school district No. 16, in the town of Delhi, in the county of Delaware, and to change the site thereof. Passed April 2, 1852. Sess. Laws, p. 178.

An act changing the time for holding the annual school meeting in district No. 16 of village and town of Delhi. Passed April 30, 1864. Sess. Laws, p. 1045.

An act to authorize school district No. 20, in the town of Denmark, Lewis county, to levy and collect a tax. Passed April 19, 1847. Sess. Laws, p. 93.

An act to transfer the town of Delhi from the first to the second commissioner district of the county of Delaware. Passed April 22, 1867. Sess. Laws, vol. 2, p. 1476.

## E.

An act to establish free schools in school district No. 4, in the town of East Chester, in Westchester county. Passed June 8, 1853. Sess. Laws, p. 723.

An act to amend "An act relative to the common school fund of the town of Edmeston, county of Otsego." Passed February 26, 1828. Sess. Laws, p. 15.

An act to amend chapter 44 of the Laws of eighteen hundred and twenty-eight, being an act relative to the common school fund of the town of Edmeston, in the county of Otsego. Passed March 31, 1865. Sess. Laws, p. 415.

An act to confirm and make valid and effectual the several proceedings taken to organize the union free school of the town of Ellicott. Passed April 23, 1864. Sess. Laws, p. 770.

An act in relation to common schools in the village of Elmira. Passed April 4, 1859. Sess. Laws, p. 297.

An act to amend an act entitled "An act in relation to common schools in the village of Elmira," passed April 4, 1859. Passed February-19, 1866. Sess. Laws, p. 95.

An act to incorporate the city of Elmira. Passed April 7, 1864. Sess. Laws, p. 248. Section 9, of title 10, relates to schools.

An act relative to Erasmus Hall. Passed April 1, 1814. Sess. Laws, p. 91. The trustees of Erasmus Hall are made trustees of the school district composed of what is called the "Old Town," in Flatbush, and the commissioners of common schools of the town are required to pay over to them the school moneys to which that part of the town was entitled. The money was to be expended in the education of such poor children sent to said academy as in the opinion of the trustees were entitled to gratuitous education. This law was re-enacted in the Revised Statutes of 1827, and appears to be still in force.

An act to incorporate the village of Edgewater. Passed March 22, 1866, p. 441, vol. 1. Subdivision 16, of section 1, of title 3, relates to schools.

An act to amend an act entitled "An act to incorporate the village of Edgewater," passed March 22, 1866. Passed April 22, 1867. Sess. Laws, p. 1400, vol. 2, amends the former act.

An act to incorporate the village of Edgewater. Passed March 26, 1866, p. 441, as amended by chapter 517, p. 1400 of the Session Laws of 1866.

## F.

An act granting relief to the trustees of school district No. 3, in the town of Fabius. Passed January 27, 1833. Sess. Laws, p. 7. Authorized to sell a part of their school-house lot.

An act to authorize the trustees of Farmer's Hall academy to be trustees of a common school district, and for other purposes. Passed April 12, 1822. Sess. Laws, p. 196. The first section makes the trustees of the academy trustees of the school district comprising the village of Goshen for six years, provided a majority of the taxable inhabitants give their consent, and such consent, given every six years, may continue them in office. Section 2 permits an apportionment of school moneys among the districts in Elizabethtown and Essex, in the county of Essex. Section 3 repeals the act of April 15, 1814, relative to the village of Athens.

An act to authorize the assessment and collection of certain money within school district No. 11, in the town of Farmington. Passed April 25, 1832. Sess. Laws, p. 452. Authorizes a tax for \$138.60.

An act to provide for the payment of certain expenses of the trustees of school district No. 11, in Farmington, in the county of Ontario. Passed April 24, 1833. Sess. Laws, p. 271.

An act to legalize the proceedings of the trustees and electors of school district No. 17 (formerly No. 23), of the town of Fishkill, and to authorize the present trustees to raise money to pay certain debts and expenses. Passed March 4, 1851. Sess. Laws, p. 34.

An act in relation to school district No. 18, in the town of Fishkill. Passed April 13, 1861. Sess. Laws, p. 530.

An act to make the common school in district No. 4, in the town of Fishkill, Dutchess county, free, and to provide a tax for that purpose. Passed February 28, 1865. Sess. Laws, p. 88.

An act to authorize school district No. 11, of the town of Fishkill, to borrow money to build a school-house, and for other purposes. Passed April 19, 1867. Sess. Laws, p. 1062, vol. 1.

An act in relation to common schools in the town of Flatbush, in the county of Kings. Passed April 30, 1844. Sess. Laws, p. 360.

An act in relation to common schools in the town of Flatbush, in the county of Kings. Passed May 12, 1846. Sess. Laws, p. 301.

An act to authorize a sale of the real estate of school district No. 2, of the town of Flatbush, in Kings county. Passed November 27, 1847. Sess. Laws, p. 505.

An act relative to the managers of a free school in the town of Flushing, in Queens county. Passed April 10, 1818. Sess. Laws, p. 121. Authorizes the commissioners of common schools of the town of Flushing to pay to the managers of the free school association the school moneys apportioned to school district No. 5.

An act to establish free schools in district No. 5, in the town of Flushing. Passed March 10, 1848. Sess. Laws, p. 87.

An act to amend "An act to establish free schools in district No. 5, in the town of Flushing," passed March 10, 1848. Passed March 21, 1849. Sess. Laws, p. 160.

An act to amend an act to establish free schools in district No. 5, in the town of Flushing, passed March 10, 1848. Passed April 15, 1854. Sess. Laws, p. 617.

An act to establish free schools in district No. 3, in the town of Flushing. Passed April 16, 1857. Sess. Laws, vol. 2, p. 431.

An act authorizing the board of education of Forestville union free school district No. 16, of the towns of Hanover and Sheridan, in the county of Chautauqua, to borrow money, to be used in the erection of a new school-house. Passed March 15, 1865. Sess. Laws, p. 217.

An act directing a grant of land for the site of a school-house in school district No. 2, in the town of Fort Covington, in the county of Franklin. Passed February 16, 1821. Sess. Laws, p. 45. Directs the grant of a square acre of land.

An act for the relief of Nathaniel Colver, and for other purposes. Passed March 21, 1823. Sess. Laws, p. 89. The fourth section directs that the school lot shall be laid out in an oblong square, having a front of two chains and fifty links on High street.

An act to establish a board of education in the village of Fort Covington. Passed April 11, 1853. Sess. Laws, p. 285.

An act to authorize the board of education of the village of Fort Covington to sell the sites of the present school-houses in said village, and for other purposes. Passed March 26, 1866. Sess. Laws, p. 517.

An act authorizing the town of Fort Edward to dispose of certain public moneys. Passed April 18, 1826. Sess. Laws, p. 276. Appropriates \$150 poor money to the support of schools.

An act for the relief of the trustees and collector of school district No. 3, in the town of Frankfort, in the county of Herkimer. Passed March 21, 1828. Confirms an assessment and tax list.

## G.

An act for the relief of Hamlet Scrantom. Passed April 18, 1823. Sess. Laws, p. 216. Orders \$103.91 to be raised by tax on school district No. 2, Gates, for his benefit.

An act for the relief of Matthew Brown, Jr. Passed March 28, 1829. Sess. Laws, p. 160. School district No. 2, Gates, Monroe county, to pay him \$105.51.

An act authorizing the trustees of the Genoa academy to sell and dispose of their corporate property. Passed April 16, 1852. Sess. Laws, p. 510. Sale to district No. 6, for a union school.

An act to authorize the trustees of school district No. 1, in the town of German Flats, to borrow money to build a school-house. Passed March 6, 1849. Sess. Laws, p. 112.

An act to authorize the trustees of school district No. 2, in the town of German Flats, to borrow money, and to impose a tax for the repayment of the same. Passed March 20, 1850. Sess. Laws, p. 114.

An act to authorize the election of trustees in union free school district No. 2, in the town of German Flats, in the county of Herkimer, and to classify said trustees and regulate their powers and duties. Passed January 26, 1866. Sess. Laws, p. 32.

An act to confirm the decision of the Superintendent of Public Instruction, relating to the election of trustees in union free school district No. 2, in the town of German Flats, in the county of Herkimer, and to confirm the official action of said trustees, and to define their tenure of office. Passed January 24, 1867. Sess. Laws, vol. 1, p. 34.

An act to unite the libraries of the common school districts of the village of Glen's Falls. Passed July 9, 1851. Sess. Laws, p. 807.

An act in relation to the Gowanda union school. Passed April 29, 1863. Sess. Laws, p. 456.

An act to authorize school district No. 4, in the town of Greece, to raise money on its bonds for building a school-house. Passed April 22, 1862. Sess. Laws, p. 770.

An act requiring the town superintendent of the town of Greene to add certain moneys to the town fund of said town. Passed April 12, 1852. Sess. Laws, p. 299.

An act to authorize the trustees of school district No. 4, in the town of Greene, to borrow money on the credit of said district, and to provide for the payment thereof. Passed April 13, 1859. Sess. Laws, p. 643.

An act to authorize the supervisors of the towns of Guilford and Oxford to sell and convey certain school and gospel lands in those towns. Passed April 30, 1864. Sess. Laws, p. 1044.

An act to increase the number of members of the board of education of school district No. 8, in the town of Greenburgh, in the county of Westchester. Passed April 29, 1863. Sess. Laws, p. 469.

An act to authorize school district No. 4, in the town of Greece, to raise money on its bonds, for the purpose of building a school-house. Passed March 26, 1867. Sess. Laws, vol. 1, p. 236.

An act for the encouragement of schools. Passed April 9, 1795. Sess. Laws, p. 248, Greenleaf, vol. 3. This was the first general school law passed in this State. It provided that there should be appropriated from the treasury \$50,000 a year for five years, "for the purpose of encouraging and maintaining schools in the several cities and towns in this State, in which the children of the inhabitants residing in the State shall be instructed in the English language, or be taught English grammar, arithmetic, mathematics and such other branches of knowledge as are most useful and necessary to complete a good English education." The first apportionment was made by the law, according to the representation of the counties in the Assembly; but it was provided that future apportionments should be made "in proportion to the number of electors for members of Assembly in each county." The boards of supervisors were required to apportion the money among the several towns according to the number of taxable inhabitants, as they should appear from the tax lists annually returned to them by the assessors. The boards of supervisors in the several counties in the State were also required to raise by tax a sum equal to the amount apportioned from the State treasury, except that the city of Albany was to raise a tax for only half the amount. In the city of New York the money was to be used for the support of charity schools, and all other schools, such as mentioned above, "whether the children taught in such charity schools shall be children of white parents, or descended from Africans and Indians." The inhabitants of the towns were required to elect not less than three nor more than seven persons to be commissioners of schools, to have the distribution of the money and the superintendence of the schools. The cities of Albany and Hudson, for the purposes of the act, were declared to be towns. The inhabitants of the towns were authorized to elect trustees, and to associate together for the purpose of hiring school-masters and organizing schools. The trustees were required to make, on the third Tuesday in March in each year, a return of the school kept in their charge, containing the name of the master, or

masters, the number of days he or they had taught, the names of the scholars instructed and the number of days they have severally attended the school, and the time or times within which the school has been kept. The commissioners were "to collect into one sum the whole number of days for which each and every scholar, that may have attended any one of the said schools, shall have been instructed therein, and to apportion the moneys allotted to and raised in that town for the purpose aforesaid, according to the whole number of days for which instruction shall appear to have been given in said schools, in such manner that the school in which the greater number of days of instruction shall appear to have been given shall have a proportionably larger sum." The money was paid to the trustees by an order drawn by the commissioners on the county treasurer. The commissioners were required to make to the county treasurer an annual report of the condition of the schools, and the county treasurer was required to transmit the same to the Secretary of State.

An act to amend the act entitled "An act for the encouragement of schools." Passed April 6, 1796. Sess. Laws (Greenleaf's ed.), vol. 3, p. 326. Amended the act so that schools organized of parts of adjoining towns might receive money in the same manner as other schools. Children taught in academies "reading, writing and common arithmetic," were declared "children of common schools," and entitled to the benefit of the act the same as "scholars belonging to the common schools."

An act further to amend an act entitled "An act for the encouragement of schools." Passed March 10, 1797. Sess. Laws (Greenleaf's ed.), vol. 3, p. 397. Ordered, that in the city of New York one-sixth part of the public money should be apportioned to the charity schools, and the other five-sixths "among the schools which in any wards in the city may be established and conducted in conformity to the said act." The inhabitants of the city were also granted the same rights, powers and privileges as were granted the inhabitants residing in any part of any towns in the State. It was also provided that no school in the State should receive any more money in any one year than should be required to pay the master or masters for the same year. The apportionment was made for the years 1796, 1797, 1798, but was omitted for the years 1799 and 1800. An abstract of the returns for the year 1798 from sixteen of the twenty-three counties shows a total of 1,352 schools, organized according to the act, in which 59,660 children were taught.

An act for the payment of certain officers of government, and for other purposes. Passed April 8, 1801. Sess. Laws, p. 217. One of the sections of this act directs "that no payments shall hereafter be made to any of the county treasurers under the 'act for the encouragement of schools,' passed the 9th day of April, 1795," until legislative provision be made on the subject.

An act to raise a fund for the encouragement of common schools. Passed April 2, 1805. Sess. Laws (Webster & Skinner's ed.), vol. 4, p. 126. Appropriates the net proceeds of 500,000 acres of land first sold after the passage of the act, to be a permanent fund for the support of common schools. No distribution of the income was to be made until the interest should amount to \$50,000 annually. This act laid the foundation of the common school fund.

An act for the payment of certain officers of government, and for other purposes. Passed April 9, 1811. Sess. Laws (Webster & Skinner's ed.), p. 328. Section 54 authorized the Governor to appoint five commissioners to draw up a plan for the organization and establishment of common schools.

An act for the establishment of common schools. Passed June 19, 1812. Sess. Laws (Webster & Skinner's ed.), p. 600. This was the first law for the organization of common schools. It was repealed in 1814, and superseded by an amended act. This in its turn was repealed and revised in 1819. The revisers, whose work is known as the Revised Statutes, framed a new statute, which took effect January 1, 1828, and which repealed all general laws on the subject of a previous date. Section 18 permitted the Albany Lancaster school society to share in the distribution of the revenue of the school fund.

An act to amend an act entitled, "An act for the establishment of common schools." Passed March 4, 1813. Sess. Laws, p. 29. Directs the mode of distributing money

An act for the better establishment of common schools. Passed April 15, 1814. Sess. Laws, p. 229. This is a general revision of the school laws of June 19, 1812, prepared on the report of the Superintendent, showing the defects in that law. It was thought fit to pass an entirely new act and repeal the first act. By the twenty-eighth section, the public money appropriated to the city of Albany was to be paid to the trustees of the Lancaster school in said city, to be applied to the education of such poor children in said city as in their opinion should be entitled to gratuitous education.

An act to amend the act entitled "An act for the better establishment of common schools." Passed April 18, 1815. Sess. Laws (Webster & Skinner's ed.), vol. 3, p. 260.

An act for the support of common schools. Passed April 12, 1819. Sess. Laws, p. 187. A re-enactment of the school laws, and a repeal of the acts of April 15, 1814, and April 18, 1815.

An act for the relief of certain school districts. Passed April 14, 1820. Sess. Laws, p. 204. A general relieving act authorizing the distribution of school money to them.

An act for the relief of certain school districts. Passed February 16, 1821. Sess. Laws, p. 40. A general relieving act, allowing the districts to share in the school moneys, notwithstanding their failure to make their annual reports.



An act relative to the incorporation of Lancastrian and other schools. Passed February 23, 1821. Sess. Laws, p. 54. Authorizes the Regents of the University to incorporate Lancastrian schools. With the consent of a majority of the inhabitants of any district in which such schools might be established, they were to be regarded as district schools, and to share in the distribution of the revenue of the school funds and other school moneys.

An act for the payment of the officers of government therein mentioned. Passed April 3, 1821. Sess. Laws, p. 248. Section 2 abolishes the office of Superintendent of Common Schools, and imposes the duties upon the Secretary of State.

An act to amend the act entitled "An act for the support of common schools," passed April 12, 1819. Passed April 17, 1822. Sess. Laws, p. 287. This act, section 7, first authorized appeals to the Superintendent in district school controversies, and made his decision final.

An act further amending the act for the support of common schools. Passed April 19, 1823. Sess. Laws, p. 238.

An act to provide permanent funds for the annual appropriation to common schools, to increase the literature fund and to promote the education of teachers. Passed April 13, 1827. Sess. Laws, p. 237. The first section transfers to the school fund the balance of the loan of 1786, and \$100,000 of bank stock. The third section added \$150,000 to the literature fund, and placed the revenue of it at the disposal of the Regents. This revenue was directed to be distributed to academies "in proportion to the number of pupils instructed in each academy or seminary for six months during the preceding year, who shall have pursued classical studies, or the higher branches of English education, or both; and that no pupil shall be deemed to have pursued classical studies, unless he shall have advanced as far at least as to have read the first book of the *Æneid* of Virgil in Latin; and no student shall be deemed to have pursued the higher branches of an English education unless he shall have advanced beyond such knowledge of common, vulgar and decimal arithmetic, and such proficiency in English grammar and geography as are usually obtained in common schools." The body of the act contains no allusion to "the education of teachers," but we may infer from the title that the academies which were to receive the income of the large addition to the literature fund were expected to expend it with special reference to the education and training of common school teachers.

An act concerning the Revised Statutes passed at the present meeting of the Legislature. Passed December 4, 1827. Sess. Laws, p. 11. Section 4, subdivision 7, repeals "all statutes and parts of statutes, consolidated and re-enacted in title 2, of chapter 15, or repugnant to the provisions contained therein; and all statutes and parts of statutes concerning common schools," from and after December 31, 1827. Section 7 repealed "all statutes consolidated and re-enacted in those parts of chapter 15, not comprised in the second title thereof, or repugnant to the provisions contained therein," from and after December 31, 1828. Of chapter fifteen of the Revised Statutes, entitled "of public instruction," title 2, which applied to common schools, took effect January 1, 1828, and the remaining titles January 1, 1829.

An act to repeal certain acts and parts of acts. Passed December 10, 1828. Sess. Laws, p. 34. Subdivision 282 of section 1, repeals "An act for the support of common schools, passed April 12, 1819, and all acts amending the same, or relating to the subject-matter thereof, to take effect December 31, 1829." Chapter 15 of the Revised Statutes, entitled "Of public instruction," of which title 2 took effect January 1, 1828, and the rest January 1, 1829, was enacted as a substitute for all previous laws relating to common schools. The act of 1819 repealed all former statutes relating to the same subject.

An act to amend certain provisions of the Revised Statutes, and in addition thereto. Passed April 20, 1830. Sess. Laws, p. 384. Section 5 changed the rule of apportionment by making it among the several towns and cities according to population. Section 6 enlarged the right to appeal.

An act concerning district school-houses. Passed February 17, 1831. Sess. Laws, p. 47. Provides that after the building of a school-house, the site shall not be changed while the district remains unaltered, nor then without the consent of the commissioners of common schools, nor without a vote of two-thirds of the voters at a special meeting in its favor. Also provides for the sale of the site and property of a district in which the site has been changed.

An act to amend the act for the relief and support of indigent persons (part 1, chap. 20, title 1). Passed April 25, 1831. Sess. Laws, p. 346. Section 4 requires all superintendents of the poor to cause all children over five and under sixteen years of age to be taught as children are taught in common schools, at least one-fourth of the time they remain in the poor-houses. Section 6 forbids the enumeration of such children by the trustees of school districts.

An act to amend the Revised Statutes relating to common schools. Passed April 21, 1831. Sess. Laws, p. 247. Applies the provisions of section 26 Revised Statutes to districts formed as well as to altered districts, so that they may draw public moneys if they have been formed from districts which have had a school kept for three months.

An act relating to common schools. Passed April 26, 1832. Sess. Laws, p. 513. Authorizes the purchase of Hall's lectures on school-keeping for each district in the State.

An act to amend the act relating to common schools. Passed April 26, 1832. Sess. Laws, p. 547. Directs school district taxes to be collected under section 2 of the act of 1831, April 21, amending the Revised Statutes.

An act concerning the literature fund. Passed May 2, 1834. Sess. Laws, p. 425. Requires the revenue in the treasury and the excess of the revenue of the fund, over \$12,000 a year, to be expended in the education of common school teachers.

An act relating to public instruction. Passed March 14, 1835. Sess. Laws, p. 30. Relates to distribution of a report upon the education of common school teachers, and makes seven trustees of any academy a quorum to transact business.

An act to amend title 2 of chapter 15 of part first of the Revised Statutes, entitled "Of common schools." Passed May 11, 1835. Sess. Laws, p. 356. Changes the time when the commissioners of common schools are to make their reports from October 1st to August 1st, and the time for county clerk to make and transmit his abstract from December to October 1st. Section 3 makes warrants for rate bills of like force as warrants of the board of supervisors to collectors of taxes. Section 4 authorized the sale of old site, whenever the site had been legally changed.

An act relating to public instruction. Passed April 13, 1835. Sess. Laws, p. 65. Authorizes the taxable inhabitants of any school district to levy a tax of \$20, to buy a district library, and to levy also, yearly, \$10, to make additions.

An act concerning common schools. Passed May 1, 1837. Sess. Laws, p. 310. Authorizes the publication of school laws and decisions. In pursuance of this act General Dix prepared the volume known as "School Laws and Decisions."

An act concerning common schools. Passed April 22, 1837. Sess. Laws, p. 231. The first three sections require the reports of trustees and commissioners to contain a statement of the moneys expended for teachers' wages, in addition to the public money paid therefor. The third section requires academies having departments for the instruction of common school teachers to report to the Superintendent of Common Schools.

An act to appropriate the income of the United States deposit fund to the purposes of education and the diffusion of knowledge. Passed April 17, 1838. Sess. Laws, p. 220. The second section appropriates \$110,000 annually to the support of common schools. The fourth section appropriates \$55,000 annually to the purchase of books for district school libraries. The eighth section appropriates \$28,000 from the income of the United States deposit fund, and \$12,000 from the income of the literature fund, to be distributed by the Regents of the University to academies, under certain restrictions, one of which was that every academy, receiving as its distributive share a sum equal to \$700, should establish and maintain a department for the instruction of common school teachers. These appropriations have been annually made since the passage of the law. The surplus revenue has been bestowed upon colleges, academies and literary institutions.

An act respecting school district libraries. Passed April 15, 1839. Sess. Laws, p. 150.

An act to amend title 2, of chapter 15, of the first part of the Revised Statutes, relating to common schools. Passed May 3, 1839. Sess. Laws, p. 302.

An act to amend title 2, of chapter 15, of the first part of the Revised Statutes, relating to common schools. Passed May 26, 1841. Sess. Laws, p. 236. This act reduced the number of inspectors of schools to two in each district; authorized the purchase of two or more sites; provided for schools for colored children; for the publication of a periodical for three years, devoted to the cause of education; created the office of deputy superintendent for each county; and permitted the superintendent to designate any one of the clerks in his office a general deputy superintendent, with power, in his absence, to perform all his duties.

An act amendatory of the several acts relating to common schools. Passed April 17, 1843. Sess. Laws, p. 163. Abolished the offices of inspectors and commissioners of common schools, and created that of "town superintendent of common schools." All appeals were required to be made to county superintendents; and appeals from their decision might be brought to the State Superintendent within fifteen days after service of a copy thereof.

An act in relation to common schools. Passed January 28, 1845. Sess. Laws, p. 7. An appropriation bill.

An act to increase the capital of the common school fund. Passed May 10, 1845. Sess. Laws, p. 193. Adds \$84,358.15, received from the United States, under an act of Congress, passed September 4, 1841, being the proceeds of the sales of public lands, to the common school fund.

An act to prevent the disturbance of evening schools in the several school district houses in this State. Passed May 13, 1845. Sess. Laws, p. 249.

An act to amend the law in relation to common schools. Passed April 1, 1846. Sess. Laws, p. 50. Requires the trustees not to make an enumeration of Indian children residing in school districts who have not attended school for the last three months. And requires town superintendents to apportion their distributive share of the public money to Indian children in any district in which they have been instructed by a competent teacher during four months of the preceding year.

An act in relation to the dissolution of common school districts. Passed April 15, 1846. Sess. Laws, p. 70.

An act to abolish the office of trustees of the gospel and school lots, and to transfer the powers and duties of the same to the town superintendent of common schools. Passed May 11, 1846. Sess. Laws, p. 210.

An act in relation to suits against district school officers. Passed May 1, 1847. Sess. Laws, p. 163.

An act in relation to the payment of taxes in school districts. Passed May 7, 1847. Sess. Laws, p. 232.

An act in relation to reports of State officers. Passed November 11, 1847. Sess. Laws, p. 452. Requires the annual report to be completed before the expiration of the current calendar year, and to be transmitted to the Legislature immediately after the commencement of its next annual session.

An act for the establishment of teachers' institutes. Passed November 13, 1847. Sess. Laws, p. 459.

An act to abolish the office of county superintendent of common schools. Passed November 13, 1847. Sess. Laws, p. 456.

An act in relation to appeals to the Superintendent of Common Schools. Passed November 19, 1847. Sess. Laws, p. 489.

An act relative to the valuation of property for school purposes in school districts situated in different towns. Passed December 11, 1847.

An act relative to the office of town superintendent of common schools, and amendatory of the Revised Statutes entitled "of public instruction." Passed December 15, 1847. Sess. Laws, p. 683.

An act establishing free schools throughout the State. Passed March 26, 1849. Sess. Laws, p. 192.

An act to amend an act entitled "An act establishing free schools throughout the State," passed March 26, 1849. Passed April 11, 1849. Sess. Laws, p. 561.

An act making appropriations for the support of common schools for the years 1849 and 1850. Passed March 30, 1849. Sess. Laws, p. 236. Section 2 appropriates money from United States deposit or literature fund to such academies as should educate common school teachers, one or more academy in each county, but not to exceed \$250 to any county.

An act to amend an act entitled "An act in relation to suits against district school officers," passed May 1, 1847. Passed April 11, 1849. Sess. Laws, p. 545.

An act to amend chapter 480, of Session Laws of 1847, entitled "An act relative to the office of town superintendent of common schools," and amendatory of the Revised Statutes, entitled "of public instruction," passed December 15, 1847. Passed April 11, 1849. Sess. Laws, p. 534.

An act to amend "An act establishing free schools throughout the State," passed March 26, 1849. Passed January 31, 1850. Sess. Laws, p. 12.

An act requiring the supervisors of the several towns to take further security from the town superintendents of common schools whenever it is necessary for the safety of the public money. Passed April 6, 1850. Sess. Laws, p. 345.

An act to submit to the people at the next annual election the question of the repeal of the act establishing free schools throughout the State. Passed April 10, 1850. Sess. Laws, p. 804.

An act to establish free schools throughout the State. Passed April 12, 1851. Sess. Laws, p. 292.

An act to amend the act entitled "An act to establish free schools throughout the State." Passed July 9, 1851. Sess. Laws, p. 809.

An act to authorize the superintendent of common schools to purchase Webster's Unabridged Dictionary for the common school districts of this State. Passed July 9, 1851. Sess. Laws, p. 828.

An act to legalize the acts of the several school districts of this State, providing for the support of common schools. Passed July 10, 1851. Sess. Laws, p. 939.

An act to provide for the care and instruction of idle and truant children. Passed April 12, 1853. Sess. Laws, p. 358.

An act to provide for the instruction of common school teachers. Passed June 17, 1853. Sess. Laws, p. 800. Appropriates to academies instructing students for common school teachers, ten dollars a year for each scholar, not exceeding twenty-five—the money to be paid from the United States deposit fund or literature fund.

An act to provide for the establishment of union free schools. Passed June 18, 1853. Sess. Laws, p. 823.

An act in relation to recoveries against school officers. Passed June 30, 1853. Sess. Laws, p. 951.

An act creating the office of State Superintendent of Public Instruction. Passed March 30, 1854. Sess. Laws, p. 230. Created the Department of Public Instruction, and transferred to it the superintendence of the common schools. The Secretary of State had been *ex officio* Superintendent from April 3, 1821, to April 8, 1854.

An act in relation to school moneys. Passed February 6, 1855. Sess. Laws, p. 21.

An act to amend an act entitled "An act to provide for the instruction of common school teachers," passed June 17, 1853. Passed April 13, 1855. Sess. Laws, p. 765.

An act to appropriate the avails of the State tax, and other school moneys for the support of schools, and for the expenditure of a portion of the library money in providing the school districts with the laws and decisions relating to public instruction. Passed March 15, 1856. Sess. Laws, p. 37.

An act to provide for the distribution of standard works of American authors among the libraries of district schools. Passed April 12, 1856. Sess. Laws, p. 311.

An act to provide for a more thorough supervision and inspection of common schools, and further to amend the statutes relating to public instruction in this State. Passed April 12, 1856. Sess. Laws, p. 235.

An act to amend the law of taxation for the support of schools, and to change the mode of distribution of school moneys. Passed April 12, 1856. Sess. Laws, p. 296.

An act to change the school year, and to amend the statutes in relation to public instruction. Passed April 12, 1853. Sess. Laws, p. 269.

An act to amend section 85 of chapter 480 of the Laws of 1847. Passed April 16, 1858. Sess. Laws, p. 451.

An act to provide for the more effectual insurance of school-houses. Passed April 12, 1860. Sess. Laws, p. 537.

An act requiring school district lines to be definitely described and recorded. Passed April 16, 1860. Sess. Laws, p. 782.

An act for the establishing academical departments in the different "union schools." Passed April 22, 1862. Sess. Laws, p. 812.

An act to amend the statutes in relation to public instruction. Passed May 2, 1863. Sess. Laws, p. 638.

An act to revise and consolidate the general acts relating to public instruction. Passed May 2, 1864. Sess. Laws, p. 1211.

An act to amend an act entitled "An act to revise and consolidate the general acts relating to public instruction," passed May 2, 1864. Passed May 1, 1865. Sess. Laws, p. 1337.

An act to provide for the appraisal of and acquiring title to, lands taken for or in addition to sites for district school-houses. Passed April 25, 1866. Sess. Laws, p. 1749.

An act in relation to the security to be given by the supervisors of towns. Passed February 23, 1866. Sess. Laws, p. 149.

An act to amend chapter 800 of the Session Laws of eighteen hundred and sixty-six relative to the taking of lands for erection of school-houses. Passed May 9, 1867. Sess. Laws, p. 2067, vol. 2.

An act to increase the salary of the office of school commissioner. Passed March 16, 1867. Sess. Laws, p. 119, vol. 1.

An act in relation to the valuation of the property of railroad companies in school districts, for the purpose of taxation. Passed April 23, 1867. Sess. Laws, p. 1744, vol. 2.

An act to amend an act to revise and consolidate the general acts relating to public instruction, passed May 2, 1864, and to abolish rate bills authorized by special act. Passed April 16, 1867. Sess. Laws, p. 964, vol. 1.

An act providing for the application of moneys hereafter collected in the Metropolitan Excise district for certain fines, and from licenses for the sale of liquors. Passed May 10, 1867. Sess. Laws, vol. 2, p. 2221. Appropriates the moneys thus collected in the counties of Kings, Queens and Richmond, to the support of schools, first deducting the amount required by law to be paid to the inebriate asylum and inebriates' home.

An act to make the town of Chester a part of the second school commissioner's district of Orange county. Passed February 15, 1867. Sess. Laws, vol. 1, p. 70.

An act to make the town of Cambria a part of the first school commissioner's district of Niagara county. Passed March 23, 1867. Sess. Laws, vol. 1, p. 270.

An act to transfer the town of Delhi from the first to the second school commissioner's district of the county of Delaware. Passed April 22, 1867. Sess. Laws, vol. 2, p. 1476.

An act for the sale and disposition of lands belonging to this State. Passed February 25, 1789. Sess. Laws (Webster & Skinner's ed.), vol. 2, p. 254. Section 2 requires the Surveyor-General, in his survey of the twenty townships in Chenango county, to mark in every township one lot gospel and another lot schools, which lots shall not be sold, but shall be reserved; the lots marked gospel for the support of the gospel, and the lots marked schools for the support of schools in such township.

An act relative to the lots of land reserved for the support of the gospel and schools, and for the promotion of literature in the military tract in the county of Onondaga. Passed March 23, 1798. Sess. Laws (Kent & Radcliff's ed.), vol. 2, p. 254. Puts the lot in charge of the supervisors and three commissioners, with power to lease them for a term not exceeding ten years. The moneys arising from the rents and profits were to be expended for the support of the gospel and schools, or for either, or both, as the inhabitants of the towns, in town meeting, might direct.

An act to amend an act entitled "An act relative to the lots of land reserved for the support of the gospel and schools, and for the promotion of literature in the military tract in

the county of Onondaga," passed March 23, 1798. Passed April 11, 1808. Sess. Laws (Webster & Skinner's ed.), p. 404. Directs the annual rents and profits arising from the gospel lots to be divided equally among the several religious societies in the towns, and those arising from the school lots to be distributed among the schools kept by teachers, to be approved by the supervisor and commissioners, in proportion to the aggregate number of days which the scholars in each respective school shall have respectively attended such schools in the year immediately preceding such division.

An act relative to the lots of land reserved for the support of the gospel and schools in the counties of Onondaga, Cayuga, and Seneca. Passed April 4, 1807. Sess. Laws (Webster & Skinner's ed.), p. 152. Supervisors and two commissioners to be chosen from time to time by the towns authorized to lease the land for terms not exceeding twenty-one years; the moneys arising therefrom to be appropriated according to the provisions of the act passed March 23, 1798.

An act to divide the county of Onondaga. Passed April 8, 1808. Sess. Laws (Webster & Skinner's ed.), p. 365. Erects Cortland from part of Onondaga; section 13, provides for an equal division of the gospel and school lands between Truxton and Fabius and between Tully and Preble.

An act for the direction of the commissioners of the land office in certain cases, and for other purposes. Passed April 11, 1808. Sess. Laws (Webster & Skinner's ed.), p. 411. Section 1, one lot in Stirling to be set apart for gospel and schools, and the other for the promotion of literature. Section 5 directs the commissioners of the land office to lay out forty lots south of, and adjoining Oneida lake, for the benefit of the inhabitants of the twenty townships in the county of Chenango.

An act for dividing the lot set apart for gospel and schools in the town of Romulus, between the said town and the town of Fayette. Passed March 17, 1809. Sess. Laws, (Webster & Skinner's ed.), p. 462.

An act to vest certain powers in the supervisors and assessors of the several towns in the county of Clinton. Passed February 17, 1810. Sess. Laws (Webster & Skinner's ed.), p. 3. Gives the supervisors and assessors the same powers, and imposes the same duties, as were vested in and imposed on the supervisors and commissioners by the act relative to the gospel and school lots in Onondaga, passed March 23, 1798, and the amendatory act passed April 11, 1808.

An act for the payment of certain officers of government and for other purposes. Passed April 9, 1811. Sess. Laws (Webster & Skinner's ed.), p. 328. Section 18 authorizes the sale of lot No. 22, in the town of Marcellus, and the investment of the avails for the benefit of schools. Section 23 authorized the trustees of common schools and gospel lands to execute durable leases for the lots in Cayuga and Cortland counties.

An act relative to the lots appropriated for the support of the gospel and schools, on the twenty townships west of the Unadilla river, in the counties of Chenango, Madison and Oneida, and for other purposes. Passed June 16, 1812. Sess. Laws (Webster & Skinner's ed.), p. 533. Appoints commissioners to divide the lots among the townships and take charge of them. Section 6 sets apart lot No. 17, instead of lot No. 73, in Stirling, for gospel and schools.

An act to amend the act entitled "An act concerning the gospel and school lots." Passed April 2, 1813. Sess. Laws, p. 23. Authorized the sale of the lots and the loan of the money on bond and mortgage.

An act concerning the gospel and school lots, passed April 2, 1813. Sess. Laws, p. 107. Provides for the election of trustees, and directs how the lands shall be sold and the proceeds applied. The act applied to the towns of Ulysses, Ovid, Hector, Romulus, Junius and Fayette, in the county of Seneca; to the towns of Dryden, Genoa, Locke, Sempronius, Aurelius, Owasco and Brutus, in the county of Cayuga; to towns of Fabius, Camillus, Manlius, Pompey and Tully, in the county of Onondaga; and to the town of Windsor, in Broome county.

An act to authorize the supervisors of the county of Seneca to lease lot number twenty-four, in the town of Ulysses. Passed March 25, 1814. Sess. Laws, p. 74.

By an act of July 25, 1782 (see Greenleaf's Laws, vol. 1, p. 55, Sess. 6, chap. 11), certain lands were set apart for the officers and troops serving in the line of the State of New York in the army of the United States in the revolutionary war. This act was amended in some of its provisions. (Sess. 9, chap. 67; Sess. 11, chap. 89; Sess. 12, chap. 44, and Sess. 14, chap. 42.) By the act of Feb. 28, 1789 (Sess. 12, chap. 44, sec. 6), six lots were reserved in each township, viz.: One for promoting the gospel, and a public school, or schools, another for promoting literature in this State, and the remaining four to satisfy the surplus shares of commissioned officers not corresponding with the division of 600 acres, and to compensate such persons as should by chance draw lots, the greater part of which should be covered with water. In conformity with these acts and the act of April 11, 1796 (Sess. 19, chap. 69), the commissioners of the land office proceeded to ballot for the lots, etc., and lot number 24, Ulysses, was drawn for the purposes of literature. This act fulfilled the intention of the Legislature.

An act confirming the division of the lots appropriated for the gospel and schools on the twenty townships, west of the Unadilla river, in the counties of Chenango, Madison and Oneida. Passed April 9, 1814. Sess. Laws, p. 134.

By the act of Feb. 25, 1789 (Sess. 12, chap. 32, see Greenleaf, vol. 2, p. 265), the Surveyor-General was directed to cause twenty townships to be surveyed and laid out upon the eastern side of the lands purchased from the Indians in the year 1785, each township to be

500 chains square, and to be divided into four equal parts, and the whole tract to be divided into lots of 250 acres each. The Surveyor-General was likewise directed to designate out of such lots, two lots, one to be marked "gospel" and the other "schools." The commissioners of the land office, having been subsequently authorized to sell the waste and unappropriated lands belonging to this State, proceeded to sell among others the said lots so designated for gospel and schools. By the act of April 10, 1805 (Sess. 28, chap. 136), the Surveyor-General was directed to cause forty lots out of the unappropriated lands in the western district, to contain 250 acres each, to be surveyed and laid out, and one-half to be marked "gospel," and the other half "schools," being in lieu of the lands appropriated by the act of Feb. 25, 1789. By the act of April 11, 1808 (Sess. 31, chap. 237, section 5), the Surveyor-General was directed to lay out the forty lots in the tract of land then lately purchased of the Oneida Indians. No provision having been made for apportioning these lands among the different townships, the Legislature, by the act of June 16, 1812 (Sess. 35, chap. 177), authorized the inhabitants of each of the 20 townships west of the Unadilla river in Chenango, Madison and Oneida counties, and which comprised the lands in question, to elect an agent to take charge of the lots, to lease the same, to bring suits for trespasses thereon, etc. Commissioners were likewise appointed to divide the forty lots among the twenty townships, giving two to each. These commissioners having performed this duty, the present act was passed to confirm their proceedings. The law recites that the commissioners divided the land into 20 lots of 144 acres, 20 lots of 160 acres, and 20 lots of 196 acres, and gave to each town one lot of 144 acres, and one lot of 160 acres and one lot of 196 acres. A description of the land was made, signed and duly acknowledged by them, and recorded in the clerk's office of the county of Madison.

An act relative to the gospel and school lot in the town of Eastern, in the county of Chenango. Passed April 11, 1817. Sess. Laws, p. 238. Directs a division of the moneys arising from said lot between the towns of Eastern and Oxford.

An act relative to the north half of the gospel and school lot in the town of Guilford, in the county of Chenango. Passed April 15, 1818. Sess. Laws, p. 142. Directs how the rents and profits of said lot shall be disposed of for the support of schools.

An act concerning the gospel and school lot in the town of Hector. Passed April 17, 1818. Sess. Laws, p. 157. Provides for the disposition of the rents and profits of the lot, and their distribution for the payment of the wages of common school teachers.

An act to divide the town of Hanribal, in the county of Oswego. Passed April 20, 1818. Sess. Laws, p. 194. The town of Granby erected and the gospel and school lots divided.

An act concerning the gospel and school lot in the town of Preble, in the county of Cortland. Passed April 21, 1818. Sess. Laws, p. 238. The moneys arising from the sale of the gospel and school lot divided between the towns of Preble and Scott.

An act to divide the town of Cincinnatus, in the county of Cortland, into four towns. Passed April 21, 1818. Sess. Laws, p. 260. The towns of Willett, Freetown and Harrison erected, and the avails of the gospel and school lots divided between them.

An act relative to the gospel and school lot in Clinton township, now the town of Bainbridge, in the county of Chenango. Passed April 2, 1819. Sess. Laws, p. 90. Authorizes the leasing of lot No. 50, and a division of the rents, one-half to the support of the regular preaching of the gospel, and the other half to the support of schools.

An act for the more speedy collection of money arising from the rent and profits of gospel and school lots, passed April 13, 1819. Sess. Laws, p. 309. Authorizes suits to be brought against former commissioners, and directs the money recovered to be applied to the support of schools.

An act to amend an act entitled "An act relative to the lots appropriated for the support of the gospel and schools on the twenty townships west of the Unadilla river, in the counties of Chenango, Madison and Oneida, and for other purposes," passed June 6, 1812. Passed April 13, 1819. Sess. Laws, p. 299. Confirms sales in the tenth and fifteenth townships, and directs the election of agents in the towns of New Berlin and Norwich, to take charge of the avails of such sales.

An act for the relief of the town of Cicero. Passed April 12, 1820. Sess. Laws, p. 213. Applies the provisions of the act of April 2, 1813, entitled "An act concerning the gospel and school lots" to the town of Cicero.

An act for the relief of Wm. W. Baldrige. Passed November 15, 1820. Sess. Laws, p. 4. Authorizes a compromise about the gospel and school lot sold to him.

An act authorizing the sale of lot No. 1, in the town Scipio. Passed February 2, 1821. Sess. Laws, p. 20. Authorizes the sale of the lot.

An act concerning the gospel and school lot in the town of Tully in the county of Onondaga. Passed March 13, 1821. Sess. Laws, p. 88. Orders a division with the town of Spafford.

An act to divide the town of Ulysses, in the county of Tompkins. Passed March 16, 1821. Sess. Laws, p. 96. Erects the town of Covert and orders a division of the gospel and school lot.

An act relative to the gospel and school lot in the town of Oswego. Passed March 23, 1821. Sess. Laws, p. 118. Authorizes the leasing of the lot.

An act concerning the gospel and school lot in the town of Madrid, and for other purposes. Passed March 30, 1821. Sess. Laws, p. 111. Authorizes the election of trustees and directs how the lots shall be disposed of in the towns of Madrid and Hanribal.

An act relative to the gospel and school lot in the town of Camillus. Passed March 31, 1821. Sess. Laws, p. 189. Requires the trustees to give bonds.

An act concerning lot No. 24 in the town of Genoa, in the county of Cayuga. Passed February 24, 1822. Sess. Laws, p. 11. The avails of said lot declared to belong to said town for the benefit of common schools.

An act concerning the school fund in the town of Otisco, in the county of Onondaga. Passed March 15, 1822. Sess. Laws, p. 66. Provides for the division of the proceeds of the gospel and school lots, between Otisco, Pompey, Marcellus and Tully.

An act concerning the gospel and school lot belonging to the towns of Ulysses, Enfield and Ithaca. Passed April 5, 1822. Sess. Laws, p. 139. Authorizes the election of one trustee from each town to take charge of the lot, and the proceeds of such part as may have been sold.

An act relative to the gospel and school lot in the town of Hector. Passed April 12, 1822. Sess. Laws, p. 216. Directs how the trustees shall manage the gospel and school lots, and the proceeds arising from the sale thereof.

An act concerning the gospel and school lot in the town of Galen. Passed April 17, 1822. Sess. Laws, p. 315. Authorized to elect trustees to take charge of the lots.

An act concerning the gospel and school lot in the town of Stockholm. Passed February 8, 1823. Authorizes the election of trustees to take charge of the lot.

An act concerning the gospel and school lots in the several towns of the county of St. Lawrence. Passed March 21, 1823. Sess. Laws, p. 87. Authorizing the inhabitants of any town except DeKalb to elect their trustees to take charge of the school lot.

An act to divide the town of Aurelius. Passed March 23, 1823. Sess. Laws, p. 105. The towns of Auburn and Fleming were erected by the first section, and the fourth section provides for a division of the bonds and mortgages, moneys and other securities, the proceeds of the sale of the gospel and school lots between the three towns.

An act to divide the town of Louisville in the county of St. Lawrence. Passed April 9, 1823. Sess. Laws, p. 139. Erects the town of Norfolk and provides for a division of the proceeds of the gospel and school lot.

An act relating to the gospel and school lands belonging to the town of Granby, in the county of Oswego. Passed April 11, 1823. Sess. Laws, p. 156. Authorizes the leasing of the gospel and school lands and an equable division of them between the towns of Granby and Lysander.

An act for the relief of the trustees of school district No. 13, in the towns of Verona and Vernon, in the county of Oneida. Passed April, 12, 1823. Sess. Laws, p. 174. Orders a patent to be issued to the district for twelve rods of land.

An act relating to part of the avails of the gospel and school lot of the town of Tully. Passed April 23, 1823. Sess. Laws, p. 282. Provision as to collecting certain moneys belonging to the towns of Tully, Otisco and Spafford.

An act confirming the sale of certain lands made by the trustees of the town of Manlius. Passed January 16, 1824. Sess. Laws, p. 5. Confirms the sale of certain parcels of the gospel and school lot.

An act establishing the boundaries of the literature and gospel and school lots in the town of Madrid, in the county of St. Lawrence. Passed March 17, 1824. Sess. Laws, p. 90.

An act supplementary to an act entitled "An act concerning the gospel and school lot in the town of Chenango, and county of Broome, and for other purposes," passed April, 1816. Passed March 30, 1824. Sess. Laws, p. 115. Authorizes the sale of the gospel and school lot.

An act concerning the gospel and school lot in the town of Sterling. Passed April 1, 1824. Sess. Laws, p. 136. Appoints trustees to take charge of the lot and receive rents and profits.

An act concerning the gospel and school lands in the town of Colesville, in the county of Broome. Passed November 24, 1824. Sess. Laws, p. 360. Appoints trustees to take charge and receive rents and profits of lot.

An act to divide the town of Galen, in the county of Wayne. Passed November 24, 1824. Sess. Laws, p. 356. Erects the town of Savannah, without giving it any right in the gospel and school lot of Galen.

An act relative to the gospel and school lot in Greene township, in the town of Greene and county of Chenango. Passed February 5, 1825. Sess. Laws, p. 6. Provides for a division of the lot between the towns of Coventry and Greene.

An act authorizing the trustees of the Methodist Union Society, in the town of Pompey, to sell and convey real estate. Passed April 14, 1825. Sess. Laws, p. 244. Authorized to sell meeting-house and lot to school district No. 7.

An act authorizing the sale of lot No. 43, in the Edmeston tract. Passed April 14, 1825. Sess. Laws, p. 244.

An act concerning the gospel and school lots in the several towns in the county of St. Lawrence. Passed April 21, 1825. Sess. Laws, p. 415. Authorizes the inhabitants of Massena, Louisville, Norfolk, Madrid, Lisbon, Oswegatchie, DeKalb, Canton, Potsdam, Stockholm and Hopkinton, to direct how the income of the said lots shall be applied. Repeals the acts of March 30, 1821, and March 21, 1823, relating to said lots.

An act relative to the gospel and school lot, and the literature lot in the town of Owego, in the county of Tioga. Passed April 12, 1826. Sess. Laws, p. 151.

An act concerning the gospel and school lots in the towns of Gouverneur and Morristown, in the county of St. Lawrence. Passed April 15, 1826. Sess. Laws, p. 151. Appoints trustees to take charge of them and receive the rents and profits.

An act concerning the gospel and school lots in the town of Salina, and county of Onondaga. Passed April 17, 1826. Sess. Laws, p. 266. Appoints trustees to take charge of and receive rents and profits.

An act relative to the gospel and school lots, and the literature lots in Sidney and DeKalb. Passed April 17, 1826. Authorizes commissioners of land office to sell the lots to the occupants having deeds or contracts from William Cooper.

An act relative to the literature, gospel and school lots in the county of St. Lawrence. Passed March 10, 1827. Sess. Laws, p. 51. Authorizes commissioners of the land office to compromise with persons who have sold or occupied such lots under erroneous surveys.

An act for the relief of Benjamin Allen and others, settlers on the Stockbridge school lot. Passed April 2, 1827. Sess. Laws, p. 116. The lot herein mentioned was set apart for the support of schools for Indians, and this law authorized a sale of the subdivisions to the occupants.

An act to alter the time of holding the annual town meetings in the town of La Fayette, in the county of Onondaga, and for the appointment of trustees of the school fund belonging to said town. Passed April 16, 1827. Sess. Laws, p. 349. Provides for the election of three trustees, subject to the same duties and penalties as provided by the act of April 2, 1813, "concerning the gospel and school lots."

An act relative to the common school fund of the town of Edmeston, in the county of Otsego. Passed February 26, 1828. Sess. Laws, p. 40. Provides for the election of three trustees to take charge of the avails of the sale of the gospel and school lot, and the moneys coming from the overseers of the poor, which is to be invested as a common school fund for the town.

An act concerning the gospel and school lands in the town of Sanford, in the county of Broome. Passed March 20, 1828. Sess. Laws, p. 93. Trustees appointed under title 4, chapter 15, part 1, Revised Statutes.

An act in relation to the gospel and school lot in the town of Potsdam. Passed April 18, 1828. Sess. Laws, p. 399. Trustees of public lands authorized to sell said lot, and hold the proceeds subject to title 4, chapter 15, part 1, Revised Statutes.

An act concerning the gospel and school lot in the town of Chenango, in the county of Broome. Passed April 9, 1829. Sess. Laws, p. 215. Lot granted to three religious societies, to wit, the Episcopal, the Methodist and the Presbyterian.

An act relative to the gospel and school lots in the county of St. Lawrence. Passed March 4, 1831. Sess. Laws, p. 70. Authorizes the inhabitants by a vote to direct the rents and profits of such lots to the support of the gospel or schools, or either, as they in town meeting shall determine.

An act to authorize the trustees of Romulus to receive certain moneys of David Dey. Passed April 7, 1830. Sess. Laws, p. 140. Authorizes the receipt of \$300 a year, until the amount due for a part of the gospel and school lot is paid.

An act to authorize the sale of the school lot in the village of Oswego. Passed April 9, 1830. Sess. Laws, p. 154.

An act relative to the school fund of the town of DeKalb, in St. Lawrence county. Passed April 13, 1835. Sess. Laws, p. 74. Puts the school fund into the hands of the trustees of gospel and school lots.

An act to amend an act entitled "An act to divide the town of Sempronius, in the county of Cayuga," so much as relates to the division of the school moneys. Passed May 6, 1835. Sess. Laws, p. 278. Divides the gospel and school lot fund between Sempronius, Niles and Moravia, according to the number of children between the ages of five and sixteen years.

An act authorizing the trustees of school district No. 12, in the town of Oswego and county of Oswego, to sell a part of their school lot. Passed April 8, 1836. Sess. Laws, p. 144. Authorizes the sale 33 $\frac{1}{3}$  by 66 feet from the east part of the lot.

An act for the safe keeping and to provide a time for the distribution of the gospel and school fund moneys in the several towns in the county of Onondaga. Passed May 14, 1845. Sess. Laws, p. 311.

An act in relation to certain school moneys and property of the fourteenth and fifteenth townships in the county of Chenango. Passed April 17, 1862. Sess. Laws, p. 465.

## H.

An act in relation to the union free school in the village of Hamilton, in the county of Madison. Passed March 23, 1857. Sess. Laws, vol. 1, p. 357.

An act in relation to the union free school in the village of Hamilton in the county of Madison. Passed April 13, 1865. Sess. Laws, p. 739.



An act in relation to the union free schools in the village of Hamilton, in the county of Madison. Passed April 15, 1861. Sess. Laws, p. 591.

An act in relation to the Hancock union school. Passed May 5, 1863. Sess. Laws, p. 790.

An act to authorize the trustees of school district No. 14, in the town of Hempstead, Queens county, to raise money to pay certain recoveries against said trustees. Passed April 15, 1857. Sess. Laws, vol. 2, p. 24.

An act to establish a free school in district No. 1, in the town of Hempstead. Passed April 10, 1863. Sess. Laws, p. 174.

An act to consolidate school districts No. 1 and No. 8, in the town of Herkimer, and authorize them to borrow money. Passed April 10, 1850. Sess. Laws, p. 638.

An act to authorize the several school districts in the county of Herkimer to purchase O'Connor's map of the county of Herkimer. Passed March 21, 1856. Sess. Laws, p. 46.

An act authorizing the superintendent of common schools in the town of Homer to sell certain school lands, and also to confirm the title of others in the towns of Cortlandville and Homer. Passed April 2, 1854. Sess. Laws, p. 119.

An act to provide for a free school in the town of Hoosick. Passed April 15, 1864. Sess. Laws, p. 384.

An act for the incorporation and support of the Hudson Lancaster society. Passed April 15, 1817. Sess. Laws, p. 322. Section 7 requires the money received by the city of Hudson from the school fund to be paid to the trustees of the Lancaster society, and repeals the second section of an act authorizing the application of the common school moneys in the village of Athens and in the city of Hudson to the education of the poor children.

An act relative to certain schools in the city of Hudson. Passed April 11, 1820. Sess. Laws, p. 159. Requires the money apportioned to the city from the common school fund to be paid over to the trustees of the Hudson Lancaster society.

An act relative to certain school districts in the city of Hudson. Passed April 27, 1826. Sess. Laws, p. 92. Provides for a division of the school moneys between the Lancaster school society and the district schools. Repeals, also, act of April 11, 1820, relative to certain schools in the city of Hudson.

An act to authorize the raising of money for the support of the Lancaster school of the city of Hudson. Passed May 11, 1835. Sess. Laws, p. 311. Authorizes a tax of \$400 to be annually levied and expended in the support of said school.

An act relating to the Hudson Lancaster school. Passed March 9, 1839. Sess. Laws, p. 55.

An act in relation to common schools in the city of Hudson. Passed May 26, 1841. Sess. Laws, p. 332.

An act to amend an act entitled "An act in relation to common schools in the city of Hudson," passed May 26, 1841. Passed January 31, 1843. Sess. Laws, p. 10.

An act providing for the appointment and compensation of a librarian for the joint school district library of the city of Hudson. Passed April 8, 1844. Sess. Laws, p. 122.

An act to consolidate common school districts Nos. 3, 4 and 5, in the village of Huntington, Suffolk county. Passed April 13, 1857. Sess. Laws, vol. 1, p. 794.

An act to authorize the trustees of school district No. 21, of the town of Huntington, to borrow money. Passed April 12, 1860. Sess. Laws, p. 520.

An act authorizing the trustees of school district No. 21, of the town of Huntington, in the county of Suffolk, to raise money by tax. Passed April 3, 1861. Sess. Laws, p. 217.

An act for the relief of Richard Ten Eyck and Peter P. Wynkoop. Passed April 21, 1825. Sess. Laws, p. 411. District No. 4, Hurley, to pay them \$50.

## I.

An act for the establishment of schools in New Stockbridge for the instruction of Indian children. Passed February 28, 1804. Sess. Laws (K. & R.'s Rev.), vol. 3, p. 476. Authorizes a lease of 1,000 acres of land to John Gregg and others, for 30 bushels of wheat yearly for each 100 acres, the rents to be used for paying the wages of school-masters for the instruction of Indian children.

An act for the relief of the Shinnecock tribe of Indians. Passed April 19, 1831. Sess. Laws, p. 207. Appropriates \$80 annually for three years for a school, in addition to the sum to which the county of Suffolk was entitled by law.

An act in relation to certain tribes of Indians. Passed May 25, 1841. Sess. Laws, p. 213. Section 10 establishes school districts for the Onondaga Indians in whatever towns they may reside, and provides for schools.

An act to provide for the education of the children of the Onondaga Indians in the county of Onondaga, and the children of the other Indians residing in this State. Passed April 30, 1846. Sess. Laws, p. 127. This is an appropriation law.

An act making appropriations for building and furnishing school-houses, and providing for the education of the children of Indians residing on the Cattaraugus and Allegany reservations. Passed May 7, 1847. Sess. Laws, p. 261.

An act to revive an act entitled "An act for the relief of the Shinnecock tribe of Indians." passed April 19, 1831. Passed February 17, 1848. Sess. Laws, p. 54.

An act to provide for the support and education of a limited number of Indian youth of the State of New York, at the State normal school. Passed March 23, 1850. Sess. Laws, p. 140.

An act to provide for the education of the children of the Tuscarora Indians, in the county of Niagara. Passed June 20, 1851. Sess. Laws, p. 461.

An act for the relief of the Shinnecock tribe of Indians. Passed March 1, 1851. Sess. Laws, p. 25. Appropriates \$200 to be expended for the wages of a school teacher, for the years 1851 and 1852.

An act to provide for the education of the children of the Indians of the Onondaga reservation, in the county of Onondaga, in this State. Passed April 16, 1852. Sess. Laws, p. 649.

An act to provide for the education of the children of the St. Regis Indians in the county of Franklin. Passed April 13, 1853. Sess. Laws, p. 427.

An act to establish the Seneca Indian high school on Cattaraugus reservation. Passed July 21, 1853. Sess. Laws, p. 1133.

An act to provide for the establishment of schools upon the Tonawanda reservation, in this State, for the instruction of Indian children. Passed June 21, 1853. Sess. Laws, p. 848.

An act to provide for the education of the Tuscarora Indians in the county of Niagara. Passed April 15, 1854. Sess. Laws, p. 663.

An act relating to schools on the Tonawanda reservation. Passed April 15, 1854. Sess. Laws, p. 651.

An act to facilitate education and civilization among the Indians residing within this State. Passed April 1, 1856. Sess. Laws, p. 99.

An act to establish free schools in the village of Ithaca. Passed March 19, 1861. Sess. Laws, p. 87.

An act in relation to common schools in district No. 12, in the town of Islip, Suffolk county. Passed April 17, 1865. Sess. Laws, p. 820.

An act to provide for the education of the children of the Indians of the Tonawanda Indian reservation in the county of Genesee. Passed July 21, 1853. Sess. Laws, p. 1118.

## J.

An act to incorporate the village of Jamaica, in the county of Queens, into a separate school district, and to establish free schools therein. Passed July 18, 1853. Sess. Laws, p. 997.

An act to amend an act entitled "An act to incorporate the village of Jamaica in the county of Queens, into a separate school district, and to establish free schools therein," passed July 18, 1853. Passed May 9, 1867. Sess. Laws, vol. 2, p. 2179.

An act relative to the trustees of common schools in the town of Jericho. Passed March 15, 1811. Sess. Laws (Webster & Skinner's ed.), p. 131. The inhabitants were authorized to elect trustees of common schools for the town, who shall take charge of the literature lot in the town, sell it, invest the proceeds, and use the income for the support and benefit of common schools.

An act to vest certain land belonging to the people of this State in the trustees of school district No. 23, in Johnstown. Passed April 16, 1827. Sess. Laws, p. 340. Grants an acre of land called the jail lot, on condition that a school-house shall be built thereon within two years.

An act to consolidate the Jordan academy, and free school district No. 4, in the town of Elbridge, in the county of Onondaga. Passed February 26, 1867. Sess. Laws, vol. 1, p. 73.

## K.

An act concerning school districts Nos. 2 and 5, in the town of Kinderhook. Passed April 27, 1829. Sess. Laws, p. 418. Amended by act of May 1, 1829, p. 516, so as to apply to districts Nos. 2 and 9. Authorizes the establishment of evening schools for children in the factories.

An act to consolidate school districts Nos. 5, 8, 11 and 15, of the town of Kingston, Ulster county, into one school district. Passed April 29, 1863. Sess. Laws, p. 594.

An act entitled an act to amend "An act to consolidate school districts Nos. 5, 8, 11 and 15 of the town of Kingston, Ulster county, into one school district," passed April 29, 1863. Passed March 12, 1864. Sess. Laws, p. 65.

## L.

An act for the relief of school district No. 9, in the town of Lancaster, in the county of Erie. Passed April 12, 1855. Sess. Laws, p. 666.

An act for the relief of the trustees of school district No. 13, in the town of Lansing, in the county of Tompkins. Passed April 10, 1826. Sess. Laws, p. 106. Commissioners of land office directed to convey a lot of land to the district.

An act to incorporate a monitorial school society in the village of Lansingburgh. Passed April 14, 1827. Sess. Laws, p. 297. Incorporates district No. 1 as a monitorial school society, and authorizes the inhabitants of the village to elect trustees annually.

An act for the relief of the Lansingburgh monitorial school. Passed April 5, 1828. Sess. Laws, p. 172. Requires the money received from licenses granted to vendors of lottery tickets to be paid to the trustees of the said school.

An act to create a school district from part of the village of Lansingburgh and part of the city of Troy. Passed February 20, 1838. Sess. Laws, p. 22.

An act to repeal the act incorporating the "Lansingburgh monitorial school society," passed April 14, 1827. Passed May 26, 1841. Sess. Laws, p. 305.

An act to provide for a free school in district No. 1, in the town of Lansingburgh. Passed October 26, 1847. Sess. Laws, p. 442.

An act to amend an act in relation to free schools in the city of Troy, and school district No. 10, in the town of Lansingburgh, passed April 10, 1850. Passed July 1, 1851. Sess. Laws, p. 712.

An act to amend an act in relation to free schools in the city of Troy, and school district No. 10, in the town of Lansingburgh, passed July 1, 1851; also to amend the act providing for the establishment of free schools in the city of Troy, passed April 4, 1849. Passed March 28, 1854. Sess. Laws, p. 158.

An act to provide for a free school in district No. 5, in the town of Lansingburgh, in the county of Rensselaer. Passed April 10, 1857. Sess. Laws, vol. 1, p. 697.

An act to authorize the town superintendents of common schools of the towns of Lee, Ava and Annsville, in the county of Oneida, to appraise and make distribution of certain school district property in said county. Passed April 12, 1853. Sess. Laws, p. 409.

An act for the relief of union free school district No. 9, in the town of Lenox. Passed March 30, 1861. Sess. Laws, p. 184.

An act to authorize the town of Le Roy, in the county of Genesee, to raise \$10,000 for the benefit of the Le Roy academic institute. Passed March 4, 1867. Sess. Laws, vol. 1, p. 84.

An act to confirm the official acts of Jeremiah Howe, Charles Wright and Isaac Hays, trustees of the Lewis school fund, in the town of Lewisboro', in the county of Westchester. Passed March 28, 1843. Sess. Laws, p. 42.

An act in relation to the Lewisboro' school fund. Passed April 12, 1842. Sess. Laws, p. 406.

An act authorizing the trustees of school district No. 10, in the town of Little Falls, to borrow money to build a school-house. Passed April 1, 1846. Sess. Laws, p. 51.

An act authorizing the trustees of school district No. 1, in the town of Little Falls, to borrow money to build a school-house. Passed May 12, 1847. Sess. Laws, p. 291.

An act to establish a free school in school district No. 1, in the towns of Little Falls and Manheim, Herkimer county. Passed March 22, 1866. Sess. Laws, p. 375.

An act for the relief of the trustees of school district No. 7, in the town of Jima, in the county of Ontario. Passed April 2, 1819. Sess. Laws, p. 90. Authorizes the sale of one-sixteenth of an acre of land to the trustees of school district No. 7, by the administratrix of Joseph M. Gilbert, deceased, to belong to the district so long as occupied for a school-house.

An act to authorize joint school district No. 2, composed of parts of the counties of Livingston, Monroe and Ontario, to raise a tax. Passed December 10, 1847. Sess. Laws, p. 566.

An act to authorize the trustees of school district No. 10, in the town of Livonia, in the county of Livingston, to collect a tax. Passed July 2, 1851. Sess. Laws, p. 732.

An act to incorporate the Hannibal and Volney Bridge company, and for other purposes. Passed April 15, 1817. Sess. Laws, p. 288. Section 16 directed the money received into the treasury for the support of a common school in the village of Lewiston, by the act to alter the plan of the village of Lewiston, passed March 30, 1810, to be loaned as the school fund moneys are loaned.

An act concerning common schools in the village of Lewiston. Passed April 10, 1818. Sess. Laws, p. 101. The moneys coming into the treasury under the act to alter the plan of the village of Lewiston, passed March 30, 1810, and under section 16 of the act to incorporate the Hannibal and Volney Bridge company, passed April 15, 1817, required to be paid to the trustees of common schools of the village of Lewiston.

An act to authorize the Surveyor-General to convey to David M. Smith a lot of land in the village of Lewiston, and for other purposes. Passed February 9, 1821. Authorizes the sale to him of school lot No. 266, and directs the trustees of the common school in the village of Lewiston to take possession of all the unsold lots of land in said village, which, by the act of March 10, 1810, are pledged to the support of schools.

An act relating to the Lewiston school fund. Passed April 15, 1826. Sess. Laws, p. 239. Creates commissioners of the fund, and directs all moneys belonging to it to be transferred

to them by the Comptroller. Repeals the sixteenth section of an act to incorporate the Hamilton and Volney bridge company, passed April 15, 1817, and an act concerning common schools in the village of Lewiston, passed April 10, 1818.

An act to authorize the building of a school-house, in the village of Lewiston. Passed April 11, 1834. Sess. Laws, p. 123. Authorized a tax to purchase an additional site and the building of a school-house thereon.

An act in relation to common schools, in the village of Lockport. Passed March 31, 1847. Sess. Laws, p. 50.

An act to amend an act entitled "An act in relation to common schools in the village of Lockport," passed March 31, 1847. Passed March 18, 1850. Sess. Laws, p. 112.

An act to amend an act entitled "An act in relation to common schools in the village of Lockport," passed March 31, 1847. Passed April 2, 1858. Sess. Laws, p. 189.

An act in addition to and in amendment of an act in relation to common schools in the village of Lockport. Passed March 31, 1847. Passed May 2, 1863. Sess. Laws, p. 637.

An act to amend chapter 51 of the Laws of 1847, entitled "An act in relation to common schools in the village of Lockport," and to amend chapter 77 of the Laws of 1850, entitled "An act to amend an act in relation to common schools in the village of Lockport." Passed April 4, 1866. Sess. Laws, p. 840.

An act in relation to the common schools in the city of Lockport. Passed May 9, 1867. Sess. Laws, vol. 2, p. 2070.

An act concerning the Lodi union school district and district No. 1, in the village of Owego. Passed May 12, 1846. Sess. Laws, p. 254.

An act to authorize the trustees of school district No. 2, in the town of Luzerne, Warren county, New York, to borrow money to erect a school-house. Passed April 8, 1859. Sess. Laws, p. 445.

An act in relation to school district No. 6, in the town of Lyons. Passed March 27, 1844. Sess. Laws, p. 63.

An act authorizing school district No. 6, in the town of Lyons, to raise money by tax. Passed October 26, 1847. Sess. Laws, p. 439.

An act authorizing school district No. 6, in the town of Lyons, to collect a tax, voted by them, in installments. Passed February 15, 1850. Sess. Laws, p. 19.

An act in relation to school district No. 6, in the town of Lyons, county of Wayne. Passed April 19, 1855. Sess. Laws, p. 1048.

An act to provide for the determination, settlement and payment of the claim of H. G. Hotchkiss against school district No. 6, Lyons. Passed February 7, 1856. Sess. Laws, p. 14.

An act in relation to school district No. 6, in the town of Lyons, Wayne county. Passed April 7, 1856. Sess. Laws, p. 192.

An act to amend an act entitled "An act in relation to school district No. 6, in the town of Lyons, Wayne county," passed April 7, 1856. Passed April 12, 1860. Sess. Laws, p. 499.

An act in relation to the Lyons union school, in the town of Lyons, Wayne county. Passed April 29, 1863. Sess. Laws, p. 469.

An act for the relief of Jeremiah Dunham. Passed May 7, 1839. Sess. Laws, p. 330. Authorizes a tax of \$370.25 on district No. 25, Lysander, to pay a judgment against Dunham on a contract for building a school-house.

An act to authorize and require the trustees of school district No. 26, in the town of Lysander, Onondaga county, to raise money by tax. Passed April 6, 1860. Sess. Laws, p. 332.

An act to erect a union school district in the towns of Lysander and Van Buren, in the county of Onondaga, and to create a board of education therein, with power of taxation and other powers for school purposes. Passed March 30, 1864. Sess. Laws, p. 138.

## M.

An act to consolidate school districts Nos. 1, 14, 15 and 23, in the town of Malone in the county of Franklin. Passed April 19, 1858. Sess. Laws, p. 633.

An act authorizing the village school district of the town of Malone, in the county of Franklin, to make a loan from the common school fund. Passed April 1, 1867. Sess. Laws, vol. 1, p. 494.

An act to establish a board of education in and for the village school district of the town of Malone, in the county of Franklin, and for other purposes. Passed January 24, 1867. Sess. Laws, p. 32.

An act to establish a board of education in and for the village school district of the town of Malone in the county of Franklin, and for other purposes. Passed January 24, 1867. Sess. Laws, vol. 1, p. 32.

An act to amend and consolidate the several acts relating to public schools in the town of Morrisania, in the county of Westchester. Passed April 12, 1867. Sess. Laws, vol. 1, p. 788.

An act to amend an act entitled "An act for the collection of taxes in the towns of Morrisania and West Farms, in the county of Westchester," passed April 21, 1862. Passed May 9, 1867. Sess. Laws, vol. 2, p. 2089.

An act in relation to the Morrisville union school. Passed May 9, 1867. Sess. Laws, vol. 2, p. 2068.

An act to provide for the establishment of free schools in the village of Middletown. Passed April 19, 1867. Sess. Laws, vol. 1, p. 1024.

An act to authorize the application of the interest of the poor fund of the town of Macdonough to the support of common schools. Passed April 14, 1831. Sess. Laws, p. 170. Appropriates the interest of \$600 to the support of schools.

An act for the relief of the trustees of joint school district No. 7, in the towns of Malta, Milton and Saratoga Springs. Passed April 8, 1844. Sess. Laws, p. 125.

An act in relation to common schools in the village of Medina. Passed April 9, 1849. Sess. Laws, p. 411.

An act to amend "An act relating to common schools in the village of Medina," passed April 9, 1849. Passed April 10, 1850. Sess. Laws, p. 686.

An act to confirm certain acts of school district No. 12, in the village of Medina, relative to raising money to complete the school-house. Passed March 29, 1851. Sess. Laws, p. 83.

An act to consolidate the school districts Nos. 6 and 15, in the town of Mentz, in the county of Cayuga, into one school district, and to provide for the organization of a school and academy therein, and to enable the said district to loan money to erect the necessary buildings therefor. Passed April 7, 1857. Sess. Laws, vol. 1, p. 627.

An act to amend an act entitled "An act to consolidate districts Nos. 6 and 15, in the town of Mentz, in the county of Cayuga, into one school district, and to provide for the organization of a school and academy therein, and to enable the said district to loan money to erect the necessary buildings therefor," passed April 7, 1857. Passed March 22, 1860. Sess. Laws, p. 169.

An act to levy a tax upon school district No. 14, in the towns of Milan and Pine Plains, to reimburse certain moneys to John Germond, David I. Hicks and Nathan Smith. Passed January 31, 1849. Sess. Laws, p. 21.

An act in relation to school district No. 12, in the towns of Milton and Ballston, in the county of Saratoga. Passed April 11, 1848. Sess. Laws, p. 337.

An act for the relief of the Montgomery academy. Passed March 24, 1815. Sess. Laws, p. 93. Makes the trustees of the academy trustees of the common school district No. 7, in the town of Montgomery. The common school was to be kept in a room in their building, by a teacher hired by them, and the public school moneys were to be paid to them. The district was made permanent, and was not to be divided without the consent of the Legislature. The act was revised in the Revised Statutes of 1827, and does not appear to have been repealed.

An act to authorize the superintendent of common schools, of the town of Moravia, to sell lot No. 52, in said town. Passed April 23, 1847. Sess. Laws, p. 121.

An act authorizing the board of education of school district No. 1, late of the town of West Farms, now of the towns of Morrisania and West Farms, to borrow money to build a school-house in said district. Passed April 15, 1861. Sess. Laws, p. 590.

An act in relation to schools and school districts in the towns of Morrisania and West Farms, in the county of Westchester. Passed April 23, 1864. Sess. Laws, p. 978.

An act to consolidate school districts Nos. 1, 3 and 15, and part of district No. 2, of the town of Mount Morris, county of Livingston, and State of New York, into one school district. Passed April 20, 1866. Sess. Laws, vol. 2, p. 1547.

An act for the relief of David Austin and George V. Hazard, late trustees of school district No. 4, in the town of Milo, in the county of Yates. Passed April 18, 1826. Sess. Laws, p. 340. Orders the collection of a tax of \$75, to pay services.

#### N.

An act for the relief of school district No. 7, in the town of Newark, and county of Tioga. Passed May 12, 1836. Sess. Laws, p. 457. Authorized to purchase the lower room of a building and occupy it as a school-house.

An act for the relief of Samuel White, Arnold Field and Tracy S. Knapp, trustees of school district No. 16, in New Berlin. Passed May 26, 1841. Sess. Laws, p. 316.

An act for the relief of Samuel White, Tracy S. Knapp and Arnold Field, late trustees of school district No. 16, in the town of New Berlin. Passed April 12, 1842. Sess. Laws, p. 283.

An act in relation to school district No. 13, in the town of Newburgh, and county of Orange. Passed April 23, 1835. Authorizes the trustees to keep and maintain a school for black children, separate and apart from their high school.

An act in relation to the Newburgh high school. Passed April 24, 1845. Sess. Laws, p. 73.

An act to divide district No. 13, in the town of Newburgh. Passed April 6, 1848. Sess. Laws, p. 300.

An act to provide for the establishment of free schools in the village of Newburgh. Passed April 6, 1852. Sess. Laws, p. 202.

An act to amend an act entitled "An act to provide for the establishment of free schools in the village of Newburgh," passed April 6, 1852. Passed March 7, 1855. Sess. Laws, p. 125.

An act to authorize the board of education of union free school district No. 2, of the town of New Lots, to raise money for the purchase of a site, and the erection of a new school-house thereon. Passed April 3, 1866. Sess. Laws, p. 805.

An act to provide for a free school in district No. 4, in the town of Newtown, in the county of Queens. Passed March 27, 1848. Sess. Laws, p. 216.

An act to provide for a free school in district No. 5, in the town of Newtown, in the county of Queens. Passed March 27, 1848. Sess. Laws, p. 214.

An act to establish a free school in district No. 3, in the town of Newtown. Passed March 16, 1850. Sess. Laws, p. 69.

An act to amend an act entitled "An act to establish a free school in district No. 3, in the town of Newtown," passed March 16, 1850. Passed July 8, 1851. Sess. Laws, p. 777.

An act to amend an act to establish a free school in district No. 3, in the town of Newtown, county of Queens. Passed March 16, 1850. Passed May 5, 1863. Sess. Laws, p. 760.

An act to amend an act entitled "An act to establish a free school in district No. 3, in the town of Newtown, county of Queens," passed May 5, 1833. Passed April 25, 1867. Sess. Laws, vol. 2, p. 2012.

An act to establish free schools in school district No. 1, in the town of New Rochelle, Westchester county. Passed March 20, 1857. Sess. Laws, vol. 1, p. 261.

An act confirming the sale of certain school district property in district No. 5, in the towns of New Scotland and Berne, in the county of Albany. Passed March 10, 1857. Sess. Laws, vol. 1, p. 257.

An act to legalize the acts of the board of education of school district No. 7, in the town and county of Niagara, and to define the limits of said district. Passed April 2, 1860. Sess. Laws, p. 231.

An act appropriating the excise fees and fines collected in the town of New Utrecht to the use of common schools in that town. Passed May 16, 1867. Sess. Laws, vol. 2, p. 2310.

An act to authorize the trustee of school district No. 16, in the town of Newstead, Erie county, to borrow money. Passed February 8, 1867. Sess. Laws, vol. 1, p. 61.

An act confirming the sale of certain school district property in district No. 5, in the towns of New Scotland and Berne, in the county of Albany. Passed March 19, 1857. Sess. Laws, vol. 1, p. 256.

An act for the establishment of a normal school. Passed May 7, 1844. Sess. Laws, p. 464.

An act in relation to the normal school. Passed May 7, 1845. Sess. Laws, p. 139. An appropriation bill.

An act for the permanent establishment of the normal school. Passed April 12, 1848. Sess. Laws, p. 446.

An act to provide for the completion of the normal school building. Passed February 24, 1849. Sess. Laws, p. 87.

An act for the support of a training school for primary teachers. Passed May 4, 1863. (Oswego.) Sess. Laws, p. 713.

An act to amend "An act for the support of a training school for primary teachers," passed May 4, 1863. Passed April 14, 1865. Sess. Laws, p. 804 (Oswego).

An act in regard to normal schools. Passed April 7, 1866. Sess. Laws, vol. 1, p. 1015.

An act in relation to the establishment of a normal and training school in the village of Fredonia, Chautauqua county. Passed March 30, 1867. Sess. Laws, vol. 1, p. 334.

An act in relation to raising moneys in the town of Cortlandville, in the county of Cortland, for the purpose of aiding in the erection and furnishing of a normal school building in said town. Passed March 30, 1867. Sess. Laws, vol. 1, p. 336.

An act in relation to the establishment of a normal and training school in the village of Geneseo, to be called "The Wadsworth normal and training school." Passed March 29, 1867. Sess. Laws, vol. 1, p. 295.

An act in regard to the normal and training school of the city of Oswego. Passed March 27, 1867. Sess. Laws, vol. 1, p. 256.

An act to amend the act entitled "An act in regard to normal schools." Passed April 7, 1866, and providing for a normal and training school in the city of Buffalo. Passed April 23, 1867. Sess. Laws, vol. 2, p. 1563.

An act in relation to the normal school located at Potsdam, in the county of St. Lawrence, pursuant to chapter 466, Laws of 1836, and to levy taxes for the purposes thereof. Passed January 23, 1867. Sess. Laws, vol. 1, p. 24.

An act in relation to the establishment of a normal and training school in the village of Brockport. Passed February 2, 1867. Sess. Laws, vol. 1, p. 54.

An act to amend an act entitled "An act in relation to the establishment of a normal school in the village of Brockport," passed February 2, 1867. Passed March 19, 1867. Sess. Laws, vol. 1, p. 139.

An act to provide for raising money to aid in the establishment of a normal school at Brockport. Passed April 23, 1867. Sess. Laws, vol. 2, p. 1535.

## NEW YORK.

An act to direct certain moneys to be applied to the use of free schools in the city of New York. Passed April 8, 1801. Sess. Laws (Webster & Skinner's ed.), vol. 2, p. 253. Directs the school moneys apportioned to New York to be paid "to the vestry of the Episcopal church, the vestry of Christ church, the trustees of the First Presbyterian church, the minister, elders and deacons of the Reformed Dutch church, the trustees of the Methodist Episcopal church, the trustees of the Scotch Presbyterian church belonging to the associated reformed synod, and to the trustees of the African school, and to the trustees of the United German Lutheran, the trustees of the German Reformed churches, to the trustees of the First Baptist church in the city of New York, and to the trustees of the United Brethren or Moravian church, each, one-eleventh part of all the money in the hands of the common council."

An act to incorporate the society instituted in the city of New York for the establishment of a free school for the education of poor children, who do not belong to and are not provided for by any religious society. Passed April 9, 1805. Sess. Laws (Webster & Skinner's ed.), vol. 4, p. 265. Common school education from date of this law until 1842 was substantially in charge of this society, whose principal founder and promoter was De Witt Clinton.

An act to incorporate the trustees of the First Protestant Episcopal charity school in the city of New York. Passed March 14, 1806. Sess. Laws (Webster & Skinner's ed.), vol. 4, p. 378. This act incorporated a school to be kept instead of the free school maintained for many years previous, under the care and management of the corporation of Trinity Church.

An act for the further encouragement of free schools in the city of New York. Passed March 30, 1811. Sess. Laws (Webster & Skinner's ed.), p. 172. Gives to the free school society \$4,000 of the moneys arising from the excise duties, then in the city treasury, and \$1,000 a year thereafter.

An act supplementary to the act entitled "An act for the establishment of common schools." Passed March 12, 1813. Sess. Laws, p. 38. The general school act of 1812 did not apply to New York city. By this act the city was permitted to share in the distribution of the revenue of the school fund. The city was required to raise a sum equal to its share of such school money. The common council appointed school commissioners to receive and apportion it. It was to be paid "to the trustees of the free school society in said city of New York, and the trustees or treasurer of the orphan's asylum society, the society of the economical school in the city of New York, the African free school, and of such incorporated religious societies in said city as now support or shall hereafter establish charity schools within the said city, who may apply for the same." The distribution was to be in proportion to the average number of children taught between the ages of four and fifteen years; but was to be paid to no society whose school had not been kept for nine months in the previous year. The children were to be taught free of expense. The trustees of the several schools were to make to the school commissioners reports similar to those of the trustees of common schools, and the school commissioners to the superintendent of common schools. The public money was to be applied to the payment of teachers' wages. The trustees of the several societies were declared inspectors of the schools of their respective societies.

An act respecting the free school society of New York. Passed April 5, 1817. Sess. Laws, p. 153. Granted \$2,000 out of the excise fund.

An act to incorporate the Hamilton free school (New York), and for other purposes. Passed April 17, 1818. Sess. Laws, p. 163. The fourth section gives the trustees of this school a share in the distribution of the common school moneys.

An act relative to the common lands of the freeholders and inhabitants of Harlem. Passed March 28, 1820. Sess. Laws, p. 96. Directs the lands to be sold by trustees: \$3,000 to be paid to the Harlem library: \$3,500 to the Hamilton school: \$4,000 to the Harlem school: \$4,500 to Manhattanville school: and until such schools are established the funds are to remain in trust in the hands of the trustees, and placed on good interest.

An act relative to the Roman Catholic benevolent society in the city of New York. Passed April 1, 1820. Sess. Laws, p. 117. Requires the commissioners of common school fund in the city to allow and pay to the trustees of the society their proportion of the common school money.

An act to amend an act entitled "An act relative to the general society of mechanics and tradesmen of the city of New York," passed April 3, 1811. Passed January 26, 1821. Sess. Laws, p. 10. Permits the school of said society to share in the distribution of the school moneys.

An act relating to common schools in the city of New York. Passed November 19, 1824. Sess. Laws, p. 377. Provides for the apportionment of school moneys to the city, and for the election of ten commissioners to distribute it: prescribes their duties as to making reports and visiting the schools, and repeals all former laws relating to the schools of the city.

An act in relation to the free school society of New York. Passed January 23, 1826. Sess. Laws, p. 19. Name altered to "public school society of New York." The society was also required to provide for the education of all children without regard to the sect or denomination to which their parents might belong. The trustees were, by section 3, permitted to charge a "moderate compensation adapted to the abilities of the parents of the children."

An act to amend the act relating to common schools in the city of New York, passed November 19, 1824. Passed April 8, 1826. Sess. Laws, p. 93. Increases the number of school commissioners to twelve.

An act to provide for the building an asylum for the deaf and dumb in the city of New York. Passed March 23, 1827. Sess. Laws, p. 76. Section 1 appropriated \$10,000 for purchase of land and erection of buildings, provided the institution should raise an equal sum. The Secretary of State was to approve the site. By section 2 the institution was placed under the supervision of the Superintendent of Common Schools, and the directors were to file their consent under their corporate seal in the office of the Secretary of State.

An act to incorporate the Manhattanville free school in the twelfth ward in the city of New York. Passed March 31, 1827. Sess. Laws, p. 103. This was essentially a public and district school. The trustees were annually elected by the freeholders of the village of Manhattanville. To receive \$2,500 from trustees of Harlem fund.

An act to incorporate the trustees of the Harlem school in the twelfth ward of the city of New York. Passed April 2, 1827. Sess. Laws, p. 119. A public school, the trustees to be annually elected by a vote of the freeholders of the village of Harlem. To receive \$4,000 from trustees of the Harlem fund.

An act to incorporate the trustees of the Yorkville school, in the twelfth ward of the city of New York. Passed April 2, 1827. Sess. Laws, p. 114. This was also essentially, a public school, of which the trustees were elected by the freeholders of the village of Yorkville. To receive \$2,000, from trustees of Harlem fund.

An act further to amend an act entitled "An act to incorporate the trustees of the First Protestant Episcopal charity school in the city of New York." Passed April 16, 1827. Sess. Laws, p. 315. Authorizes an increase of the number of schools and the number of trustees.

An act relative to deeds and mortgages executed or to be executed by the public school society of New York. Passed January 20, 1829. Grants the right to sell and convey real estate, and to mortgage and confirm all former sales and grants.

An act for the further support and extension of common schools in the city of New York. Passed April 25, 1829. Sess. Laws, p. 397. Authorizes the increase of the city school tax one-eightieth of one per cent.

An act for the further support and extension of common schools in the city of New York. Passed April 13, 1831. Sess. Laws, p. 114. Authorizes a tax of three-eighths of one per cent on the valuation of the taxable property of the city for the purposes of common schools in the city. It is to be apportioned as provided in the Revised Statutes, article 7, chapter 15, sections 117 to 127.

An act relative to the school connected with the almshouse of the city of New York. Passed April 13, 1835. Sess. Laws, p. 54. Declares school entitled to its share of public moneys in any apportionment by school commissioners, and places the school in charge of the public school society.

An act to extend to the city and county of New York the provisions of the general act in relation to common schools. Passed April 11, 1842. Sess. Laws, p. 184.

An act to amend an act entitled "An act to extend to the city and county of New York the provisions of the general act in relation to common schools," passed April 11, 1842. Passed April 18, 1843. Sess. Laws, p. 290.

An act to amend the charter of the public school society of the city of New York. Passed March 23, 1844. Sess. Laws, p. 50.

An act more effectually to provide for common school education in the city and county of New York. Passed May 7, 1844. Sess. Laws, p. 490.

An act to authorize the board of education of the city of New York to establish evening free schools for the education of apprentices and others. Passed April 16, 1847. Sess. Laws, p. 82.

An act to amend an act entitled "An act more effectually to provide for common school education in the city of New York," passed May 7, 1844. Passed May 11, 1847. Sess. Laws, p. 275.

An act to incorporate the New York society for the promotion of education among colored children. Passed December 7, 1847. Sess. Laws, p. 425.

An act in relation to the public school society in the city of New York. Passed March 4, 1848. Sess. Laws, p. 81.

An act to amend an act entitled "An act to extend to the city and county of New York the provisions of the general act in relation to common schools," passed April 11, 1842. Passed March 21, 1848. Sess. Laws, p. 147.

An act to authorize the board of education of the city of New York to establish evening schools for the education of apprentices and others. Passed March 23, 1848. Sess. Laws, p. 299.



An act to amend an act entitled "An act more effectually to provide for common school education in the city and county of New York," passed May 7, 1844. Passed March 27, 1848. Sess. Laws, p. 211.

An act to amend an act entitled "An act more effectually to provide for common school education in the city and county of New York." Passed May 7, 1844. Passed May 11, 1849. Sess. Laws, p. 549.

An act to amend the charter of the Manhattanville free school in the city of New York. Passed March 27, 1850. Sess. Laws, p. 147. Authorized to convey their real estate and improvements to the city.

An act to amend, consolidate, and reduce to one act the various acts relative to common schools of the city of New York. Passed July 3, 1851. Sess. Laws, p. 734.

An act in relation to the school officers of the twentieth ward of the city of New York. Passed March 26, 1852. Sess. Laws, p. 130. Permits them to enter upon the duties of their office as soon as they take the oath of office required by law.

An act relative to common schools in the city of New York. Passed June 4, 1853. Sess. Laws, p. 629. Authorizes the public school society to transfer all its property and schools to the city.

An act relative to common schools in the city of New York. Passed March 31, 1854. Sess. Laws, p. 235.

An act relative to common schools in the city of New York. Passed April 15, 1854. Sess. Laws, p. 583.

An act to enable the schools of the Five Points House of Industry, and the school established by the Ladies' Home Missionary Society, to participate in the distribution of the common school fund. Passed April 12, 1855. Sess. Laws, p. 161.

An act to provide for the appointment of a commission to secure the more perfect establishment, government, regulation and economy of common schools in the city of New York. Passed April 17, 1857. Sess. Laws, vol. 2, p. 528.

An act to continue the commission appointed to secure the more perfect establishment, government, regulation, and economy of common schools in the city of New York. Passed April 14, 1858. Sess. Laws, p. 318.

An act in relation to school libraries in the city of New York. Passed April 13, 1860. Sess. Laws, p. 626.

An act to repeal an act passed April 16, 1860, entitled "An act in relation to school libraries in the city of New York." Passed April 13, 1860. Passed April 15, 1860. Sess. Laws, p. 194.

An act to enable the schools of the children's aid society to participate in the distribution of the common school fund. Passed April 17, 1862. Sess. Laws, p. 455.

An act relative to common schools in the city of New York. Passed April 15, 1863. Sess. Laws, p. 193.

An act relative to common schools in the city of New York. Passed April 25, 1864. Sess. Laws, p. 822.

An act relative to common schools in the city of New York. Passed March 3, 1865. Sess. Laws, p. 94.

An act to amend an act entitled "An act to amend, consolidate and reduce to one act the various acts relative to common schools of the city of New York," passed July 3, 1851. Passed April 2, 1866. Sess. Laws, p. 748.

An act relative to common schools in the city of New York. Passed April 9, 1867. Sess. Laws, vol. 1, p. 540.

#### O.

An act in relation to schools and academies in the village of Ogdensburgh. Passed April 13, 1857. Sess. Laws, vol. 1, p. 778.

An act to provide for the payment of the arrears of salary due the superintendent of schools in the village of Ogdensburgh. Passed April 11, 1859. Sess. Laws, p. 509.

An act to amend an act entitled "An act in relation to schools and academies in the village of Ogdensburgh," passed April 13, 1857. Passed March 22, 1865. Sess. Laws, p. 288.

An act to amend an act entitled "An act in relation to schools and academies in the village of Ogdensburgh," passed April 13, 1857. Passed February 19, 1866. Sess. Laws, p. 96.

An act in relation to a school lot in the town of Olean. Sess. Laws, p. 166. Authorizes sale of school lot.

An act to consolidate districts No. 7 and No. 28, in the town of Onondaga, county of Onondaga; and to provide for the organization of a school and academy therein, and to enable the said district to provide the necessary buildings therefor. Passed April 28, 1866. Sess. Laws, vol. 2, p. 1897.

An act to incorporate the union free school district No. 4, town of Orangetown, county of Rockland. Passed April 14, 1859. Sess. Laws, p. 684.

An act to amend the "act incorporating the union free school district No. 4, town of Orangetown, county of Rockland." Passed March 26, 1866. Sess. Laws, p. 515.

An act to legalize the site of the school-house in school district No. 6, of the town of Oondaga, and to enable the trustees of said district to acquire the title to the lands now used for such site, and such other lands as may be necessary for the same. Passed April 16, 1867. Sess. Laws, vol. 1, p. 935.

An act to provide for the better education of the children in the several orphan asylums in this State other than in the city of New York. Passed April 10, 1850. Sess. Laws, p. 500.

An act to authorize the trustees of school district No. 3, in the town of Orwell, county of Oswego, to sell a part of their school lot. Passed April 12, 1843. Sess. Laws, p. 85.

An act in relation to the public schools in the city of Oswego. Passed April 5, 1853. Sess. Laws, p. 188.

An act to amend an act entitled "An act in relation to the public schools in the city of Oswego," passed April 5, 1853. Passed June 21, 1853. Sess. Laws, p. 839.

An act to amend the act entitled "An act in relation to public schools in the city of Oswego," passed April 5, 1853. Passed March 27, 1855. Sess. Laws, p. 139.

An act to divide the county of Oswego into three school commissioner districts, and to provide for the appointment of a school commissioner therein. Passed March 8, 1859. Sess. Laws, p. 65.

An act in relation to the election of school commissioners in the city of Oswego. Passed April 17, 1867. Sess. Laws, vol. 1, p. 1004.

An act to authorize the common council of Oswego to borrow money for school uses and for other purposes. Passed April 5, 1864. Sess. Laws, p. 229.

An act for the relief of the trustees of school district No. 11, in the town of Otselic, Chango county. Passed May 13, 1845. Sess. Laws, p. 255.

An act to authorize the trustees of school district No. 11, in the town of Otselic, to raise money by tax on said district to pay the costs and expenses incurred by said district or its trustees, in a suit against Isalah Lewis. Passed April 30, 1847. Sess. Laws, p. 159.

An act to consolidate the several school districts within the corporate limits of the village of Owego, and to establish free schools in the same. Passed April 23, 1864. Sess. Laws, p. 739.

An act to amend an act entitled "An act to consolidate the several school districts within the corporate limits in the village of Owego, and to establish free schools in the same," passed April 23, 1864. Passed March 17, 1865. Sess. Laws, p. 250.

An act concerning the legacy bequeathed by David Jones for the benefit of a charity school. Passed March 24, 1795. Sess. Laws (Webster & Skinner's ed.), vol. 2, p. 249. Three hundred pounds bequeathed for the education of the poor, directed to be loaned on good land security by the overseer of the poor of Oyster Bay, and the interest thereof forever applied to the instruction and education of such poor children in said town as said overseers should deem objects of charity.

An act to authorize the trustees of the Oyster Bay academy to be the trustees of a school district. Passed April 12, 1823. Sess. Laws, p. 170. With the consent of the taxable inhabitants, the trustees of the academy were to be trustees of the common school district composed of the village of Oyster Bay, for six years, and they were to continue such trustees, provided such consent should be renewed every six years.

An act to establish a free school in district No. 5, town of Oyster Bay, Queens county. Passed April 15, 1857. Sess. Laws, vol. 2, p. 223.

An act to alter school district No. 4, in the town of Oyster Bay, Queens county. Passed April 13, 1860. Sess. Laws, p. 605.

## P.

An act relative to school district No. 1, in the town of Palmyra and county of Wayne. Passed April 6, 1830. Sess. Laws, p. 121. Authorizes the district to sell its school-house and lot to the Palmyra high school.

An act relative to union school district No. 1, in the town of Palmyra. Passed March 19, 1847. Sess. Laws, p. 20.

An act in relation to consolidated school district No. 1, in the town of Palmyra, Wayne county. Passed April 7, 1857. Sess. Laws, vol. 1, p. 603.

An act to confirm the proceedings of the trustees of school district No. 11, in the towns of Pamela and Leray, in the county of Jefferson. Passed April 5, 1844. Sess. Laws, p. 104.

An act in relation to common schools in the village of Penn Yan. Passed April 17, 1857. Sess. Laws, vol. 2, p. 647.

An act to authorize the Comptroller to loan money to the Penn Yan union school district from the common school fund. Passed April 14, 1858. Sess. Laws, p. 320.

An act to amend an act in relation to common schools in the village of Penn Yan, passed April 17, 1857. Passed April 8, 1859. Sess. Laws, p. 453.

An act in relation to school district No. 8, in the town of Phelps, in the county of Ontario. Passed April 19, 1855. Sess. Laws, p. 1056.

An act to make the union school of Phelps a free school. Passed February 27, 1865. Sess. Laws, p. 79.

An act to secure to school district No. 4, in Edmeston, and No. 6, in the town of Pittsfield, in the county of Otsego, the legacies of Adin Deming, deceased. Passed March 16, 1848. Sess. Laws, p. 109.

An act for the relief of Mumford Clark, collector of school district No. 6, in the town of Pittsford. Passed January 31, 1843. Sess. Laws, p. 10.

An act in regard to school district No. 16, in the town of Pittstown, in the county of Rensselaer. Passed March 15, 1866. Sess. Laws, p. 297.

An act to consolidate school districts Nos. 1, 2, and 5, of the town of Plattsburgh, into a free union single district, and to vest the government thereof, and of the academy therein, in a board of education. Passed May 8, 1867. Sess. Laws, vol. 2, p. 2026.

An act to make school district No. 9, in the town of Pomfret, a union free school district. Passed March 17, 1858. Sess. Laws, p. 55.

An act to amend an act entitled "An act to make school district No. 9, in the town of Pomfret, a union free school district," passed March 17, 1858; and to legalize certain acts of the board of education of said district. Passed March 31, 1864. Sess. Laws, p. 98.

An act relative to appropriating the surplus poor funds in the town of Gouverneur, in the county of St. Lawrence, for the benefit of common schools. Passed March 31, 1828. Sess. Laws, p. 165. Requires \$1,000 to be paid to the trustees of public lands in said town and loaned, and the interest applied annually to the support of common schools.

An act authorizing the overseers of the poor of the town of Saranac to pay over certain moneys in their hands to the commissioners of common schools in said town. Passed February 5, 1829. Sess. Laws, p. 89.

An act relative to moneys in the hands of the overseers of the poor. Passed April 27, 1829. Sess. Laws, p. 421. Authorizes the inhabitants of towns to invest certain moneys for the support of schools, to be and remain a permanent school fund.

An act to authorize the overseers of the poor of the town of Pierrepont, in St. Lawrence county, to pay certain moneys to the commissioners of common schools in said town. Passed April 29, 1829. Sess. Laws, p. 435.

An act appropriating certain poor funds in the town of DeKalb, in the county of St. Lawrence, to the common schools of said town. Passed February 22, 1830. \$1,000 to be loaned and the interest applied to the support of common schools.

An act authorizing the application of the interest arising from the poor fund of the town of Russell to the school fund. Passed April 26, 1834. Sess. Laws, p. 86.

An act for the relief of Lewis A. Talman. Passed March 20, 1841. Sess. Laws, p. 38. (Portage.)

An act to incorporate the Poughkeepsie Lancaster school society. Passed March 11, 1814. Sess. Laws, p. 45. Section 6 of this act made the village a permanent school district, and required the commissioners of common schools to pay to the trustees of the Lancaster school society the share of public money apportioned to that part of the town comprised in the village.

An act to establish free schools in the village of Poughkeepsie. Passed April 18, 1843. Sess. Laws, p. 279.

An act to incorporate the city of Poughkeepsie. Passed March 28, 1854. Sess. Laws, p. 171.

An act to repeal and amend parts of an act entitled "An act to incorporate the city of Poughkeepsie," passed March 28, 1854, and the amendments thereto, passed April 12, 1855, and April 2, 1858, for the benefit of the common schools in said city. Passed April 6, 1860. Sess. Laws, p. 317.

An act to establish a union free school in district No. 2, in the town of Poughkeepsie. Passed May 1, 1865. Sess. Laws, p. 1304.

An act to authorize school district No. 1, of the town of Poughkeepsie, in the county of Dutchess, to borrow money for the purpose of completing a school building in said district, and to provide for the payment thereof. Passed March 9, 1867. Sess. Laws, vol. 1, p. 96.

An act to consolidate the several school districts and parts of districts in the village of Pulaski into one district, and provide for a school therein. Passed June 4, 1853. Sess. Laws, p. 648.

An act to amend an act entitled "An act to consolidate the several school districts and parts of districts in the village of Pulaski, into a district, and provide for a school therein," passed June 4, 1853. Passed April 19, 1855. Sess. Laws, p. 1073.

An act to amend an act entitled "An act to consolidate the several school districts, and parts of districts in the village of Pulaski, into one district, and to provide for a school therein." Passed April 9, 1864. Sess. Laws, p. 336.

An act authorizing the Comptroller to loan money to the Pulaski school district, and for other purposes. Passed April 17, 1854. Sess. Laws, p. 715.

An act to amend an act entitled "An act authorizing the Comptroller to loan money to the Pulaski school district, and for other purposes," passed April 17, 1854. Passed April 13, 1855. Sess. Laws, p. 767.

## R.

Revised Statutes, passed in 1827, 1828, and 1829, chapter 15, of part 1, related to public instruction. The act creating the board of Regents of the University, all the acts relating to common schools, the laws relating to Lancaster schools (Sess. Laws of 1821, p. 54), and all special acts relating to villages and cities, were included in said chapter 15.

An act to legalize the acts of the inhabitants and trustees of school district No. 12, formed partly out of the town of Ridgeway and partly out of the town of Shelby in the county of Orleans. Passed March 4, 1852. Sess. Laws, p. 45.

An act authorizing the trustees of school district No. 12, in the towns of Ridgeway and Shelby, Orleans county, to raise money by tax. Passed January 26, 1860. Sess. Laws, p. 14.

An act to incorporate the Rochester high school, in the county of Monroe. Passed March 15, 1827. Sess. Laws, p. 55. This was a Lancaster school. The first section constituted districts Nos. 4 and 14, in the town of Brighton, one district, declared to be a school district, and appointed the first trustees, with power to keep and maintain a school, and to hold and own property with an income not to exceed \$3,000 a year. They were authorized to levy a tax of \$4,000 on the district, to build a school-house.

An act to amend the act entitled "An act to incorporate the Rochester high school, in the county of Monroe." Passed March 28, 1828. Sess. Laws, p. 134. Authorizes the levy of a tax.

An act to amend the act entitled "An act to incorporate the Rochester high school, in the county of Monroe," passed March 15, 1827. Passed April 30, 1829. Sess. Laws, p. 513. Authorizes the trustees to mortgage real estate, and make the payment of such mortgage by either of them, individually, operate as a valid assignment of the mortgage to the payor.

An act to authorize the Rochester high school to raise money by tax. Passed February 23, 1831. Sess. Laws, p. 52. Authorizes the raising of \$3,000.

An act to constitute the colored children of Rochester a separate school. Passed April 14, 1832. Sess. Laws, p. 211. Authorized the school commissioners of the towns of Gates and Brighton to establish and maintain a separate school for colored children in the village of Rochester.

An act to incorporate the city of Rochester. Passed April 28, 1834. Title six relates to schools.

An act authorizing the trustees of school district No. 10, in the city of Rochester, to sell a part of their school-house lot. Passed April 23, 1835. Sess. Laws, p. 158. Authorizes the sale of half an acre from the north end of the lot, and the expenditure of the avails in the reparation of the school-house.

An act further to amend the act entitled "An act to incorporate the Rochester high school, in the county of Monroe," passed March 15, 1827. Passed April 20, 1836. Sess. Laws, p. 220. Authorizes the division of the school district attached to the high school into two common school districts.

An act further to amend an act entitled "An act to incorporate the city of Rochester," passed May 14, 1840. The sixth section authorized the levy of taxes for the support of schools, making them free.

An act further to amend an act entitled "An act to incorporate the city of Rochester," passed April 28, 1834. Passed May 20, 1841. Sess. Laws, p. 185.

An act relative to school district No. 5, in the city of Rochester. Passed April 12, 1842. Sess. Laws, p. 367.

An act relative to school districts Nos. 5 and 3, in the city of Rochester. Passed April 10, 1844. Sess. Laws, p. 131.

An act to consolidate and amend the act to incorporate the city of Rochester, passed April 28, 1834, and the several acts amendatory thereof. Passed April 11, 1844. Sess. Laws, p. 133. Title 6 relates to schools. Section 8 of the title provided for a tax sufficient to make all the schools free.

An act relative to district No. 2, in the city of Rochester. Passed April 24, 1845. Sess. Laws, p. 74.

An act to amend an act entitled "An act to consolidate and amend the act to incorporate the city of Rochester," passed April 11, 1844. Passed May 2, 1845. Sess. Laws, p. 98.

An act providing for the election of city superintendent of common schools of the city of Rochester by the electors of said city. Passed April 4, 1848. Sess. Laws, p. 235.

An act to amend an act entitled "An act to consolidate and amend the act to incorporate the city of Rochester," passed April 11, 1844, and the several acts amendatory thereof. Passed February 28, 1849. Sess. Laws, p. 96.

An act to amend and consolidate the several acts relating to the city of Rochester. Passed April 10, 1850. Sess. Laws, p. 501. Title six relates to schools.

An act in relation to the free schools in the city of Rochester. Passed March 2, 1850. Sess. Laws, p. 38.

An act to authorize the common council of the city of Rochester to raise ten thousand dollars for the use of the public schools therein. Passed April 6, 1860. Sess. Laws, p. 316.

An act to authorize the city of Rochester to borrow money for the purpose of erecting school buildings. Passed March 23, 1867. Sess. Laws, vol. 1, p. 206.

An act for the relief of certain school districts in the town of Rome, in the county of Oneida. Passed January 21, 1828. Sess. Laws, p. 12. Requires forfeited money to be apportioned to certain districts.

An act to provide for the erection of a school-house in district No. 5, in the town of Rome, and to change the site thereof. Passed March 1, 1850. Sess. Laws, p. 30.

An act to amend an act entitled "An act to make the common schools free in district No. 5, in the town of Rome, in the county of Oneida, and to provide a tax for that purpose," passed April 10, 1862, and to authorize the raising of money by tax. Passed March 28, 1867. Sess. Laws, vol. 1, p. 263.

An act in relation to school district No. 8, in the town of Royalton. Passed May 12, 1847. Sess. Laws, p. 347.

An act for the relief of the town of Rye. Passed February 9, 1821. Sess. Laws, p. 32. Orders the sale of four acres of land in said town for the benefit of schools.

## S.

An act to consolidate certain school districts within or adjoining the corporate limits of Sag Harbor, Suffolk county, and to establish a union school therein. Passed April 22, 1862. Sess. Laws, p. 799.

An act to legalize certain expenditures of the board of education of the union school district of Sag Harbor, for the purchase of text books, and for teachers' wages, and to authorize the levying of a tax for the payment of the same. Passed April 16, 1864. Sess. Laws, p. 464.

An act to amend an act entitled "An act to consolidate certain school districts within or adjoining the corporate limits of the village of Sag Harbor, Suffolk county, and to establish a union school therein," passed April 22, 1862. Passed April 22, 1864. Sess. Laws, p. 720.

An act to constitute school district No. 1, in the town of Salina and county of Onondaga, a free school. Passed April 9, 1860. Sess. Laws, p. 354.

An act to amend an act entitled "An act to constitute school district No. 1, in the town of Salina and county of Onondaga, a free school." Passed March 25, 1865. Sess. Laws, p. 340.

An act authorizing the formation of a new school district in the town of Salina, in the county of Onondaga, to be called school district No. 6, of said town. Passed April 24, 1867. Sess. Laws, vol. 2, p. 1863.

An act to amend an act entitled "An act to consolidate the several school districts, and parts of districts, within the corporate limits of Saratoga Springs, and to establish a free union school or schools therein." Passed April 25, 1867. Sess. Laws, vol. 2, p. 1958.

An act to incorporate the Schenectady Lancaster school society. Passed Nov. 12, 1816. Sess. Laws of 1817, p. 10. The first and second wards of said city were divided, and a portion formed by section 3 into a school district, and all the money raised for the support of the school, in such portion, and all the money received from the State, was required to be paid to the trustees of said society.

An act relative to certain school districts in the city of Schenectady. Passed April 6, 1827. Authorizes the formation of certain school districts out of the bounds of that portion of the city known as the police, and prescribes how the money raised by taxation shall be divided between such districts and the Lancaster school society.

An act relative to the city of Schenectady. Passed April 21, 1828. Sess. Laws, p. 437. Requires the school moneys to be apportioned between the district schools and the Lancaster school society.

An act to provide for the apportionment of school money in the city of Schenectady. Passed April 30, 1829. Sess. Laws, p. 484. Provides for a distribution of the public money, partly to the district schools, and partly to the Lancaster school society.

An act in relation to the public schools in the city of Schenectady. Passed April 9, 1854. Sess. Laws, p. 373.

An act to provide for an equitable apportionment of school moneys to certain districts heretofore within the limits of the city of Schenectady, but now in the towns of Rotterdam and Niskayuna. Passed April 3, 1866. Sess. Laws, p. 803.

An act to create a free school in the town of Schroepel, Oswego county, and to create a board of education therein, with powers of taxation and other powers for school purposes. Passed April 17, 1865. Sess. Laws, p. 826.

An act for the relief of Richard Perkins, William M. Smith and Joseph U. Blood. Passed April 10, 1845. Sess. Laws, p. 39. (Scriba, Oswego county.)

An act in relation to school district No. 1, in the town of Seneca, and in the county of Ontario. Passed April 22, 1844. Sess. Laws, p. 270.

An act in relation to school district No. 1, in the town of Seneca, in the county of Ontario. Passed April 15, 1853. Sess. Laws, p. 540.

An act in relation to school district No. 1, in the town of Seneca, in the county of Ontario. Passed April 12, 1855. Sess. Laws, p. 690.

An act relating to schools in the town of Seneca Falls. Passed April 16, 1867. Sess. Laws, vol. 1, p. 924.

An act for the relief of consolidated school district No. 7, in the town of Sherburne, county of Chenango. Passed March 29, 1853. Sess. Laws, p. 83.

An act to establish free schools in the village of Sing Sing. Passed April 15, 1854.

An act to amend the act entitled "An act to establish free schools in the village of Sing Sing," passed April 15, 1854. Passed April 10, 1857. Sess. Laws, p. 639.

An act to amend the act entitled "An act to establish free schools in the village of Sing Sing, passed April 15, 1854," and the act amendatory thereof entitled "An act to amend the act entitled 'An act to establish free schools in the village of Sing Sing,' passed April 15, 1854," passed April 10, 1857. Passed April 8, 1859. Sess. Laws, p. 455.

An act to amend the act entitled "An act to establish free schools in the village of Sing Sing," passed April 15, 1854, and the several acts amendatory thereof. Passed April 29, 1863. Sess. Laws, p. 480.

An act to consolidate school districts Nos. 2 and 15, in the town of Smyrna. Passed March 19, 1852. Sess. Laws, p. 71.

An act to repeal an act entitled "An act to incorporate the trustees of Somers village school." Passed April 9, 1852. Sess. Laws, p. 255. The act repealed was passed April 3, 1811.

An act for the relief of the trustees of district No. 2, in the town of Southeast. Passed July 9, 1851. Sess. Laws, p. 856.

An act to authorize the trustees of school district No. 1, in the towns of Southfield and Castleton, and county of Richmond, to mortgage the property belonging to said district for certain purposes. Passed April 7, 1852. Sess. Laws, p. 215.

An act for the collection of unpaid taxes in school district No. 1, in the towns of Castleton and Southfield, Richmond county. Passed March 31, 1857. Sess. Laws, vol. 1, p. 453.

An act in relation to school district No. 6, in the towns of Southfield and Castleton, Richmond county. Passed April 18, 1859. Sess. Laws, p. 1056.

An act to incorporate a part of Stephentown for the purposes therein mentioned. Passed March 23, 1799. Sess. Laws (Webster & Skinner's ed.), vol. 2, p. 251. Incorporates the freeholders of that part of the town known as the twelve thousand acres, and authorizes them to choose annually, on the last Tuesday of May of each year, three trustees of a fund given for the support of schools. The fund is limited to \$3,000, and the income is to be distributed for the benefit of schools within the bounds of the corporation.

An act relative to the school fund of Stephentown, in the county of Rensselaer. Passed April 11, 1866. Sess. Laws, p. 1113.

An act for the relief of Cyril Carpenter, Isaac Joslyn and Isaac Barnes, now or late trustees of district No. 10, in the town of Steuben. Passed April 2, 1846. Sess. Laws, p. 56.

An act for the relief of Cyril Carpenter, Isaac Joslyn, and Isaac Barnes, late trustees of school district No. 10, in the town of Sweden. Passed March 26, 1847. Sess. Laws, p. 35.

An act to provide for a permanent district school in Syracuse. Passed April 20, 1832. Sess. Laws, p. 356. Makes district No. 4, Salina, a permanent school district, and authorizes a tax of \$4,000 to build a school-house.

An act to repeal "An act to provide for a permanent district school in Syracuse." Passed March 25, 1837. Sess. Laws, p. 87. Repeals act of May 20, 1832.

An act in relation to public schools in the city of Syracuse. Passed April 11, 1848. Sess. Laws, p. 344.

An act to amend an act entitled "An act in relation to the public schools in the city of Syracuse," passed April 11, 1848. Passed May 26, 1853. Sess. Laws, p. 575.

An act to revise the charter of the city of Syracuse. Passed February 25, 1854. Sess. Laws, p. 27.

An act to authorize the city of Syracuse to raise money for the establishment of a high school. Passed March 16, 1867. Sess. Laws, vol. 1, p. 136.

#### SCHOOL FUND.

An act to incorporate the stockholders of the Merchants' Bank in the city of New York. Passed March 26, 1805. Sess. Laws (Webster & Skinner's ed.), vol. 4, p. 62. Section 11 authorized the Secretary of State to subscribe for one thousand shares of the stock, on the part of the State, without paying for the same, to form a fund for the support of common schools.

An act to raise a fund for the encouragement of common schools. Passed April 2, 1805. Sess. Laws (Webster & Skinner's ed.), vol. 4, p. 126. Appropriates the net proceeds of

five hundred thousand acres of land as a fund for common schools. The interest for moneys loaned was to be annually added to the principal, and no distribution made until the income should amount to \$50,000, the money to be loaned on bond and mortgage at six per cent.

An act further to increase the common school fund. Passed March 13, 1807. Sess. Laws (Webster & Skinner's ed.), vol. 5, p. 40. Orders all moneys arising from the stock of the State in the Merchants' Bank, and all moneys coming from the proceeds of certain lotteries, under act of April 6, 1803, to be invested in the capital stock of said Merchants' Bank.

An act giving an additional term of the general sessions of the peace for the county of Ontario, and authorizing the building of a fire-proof clerk's office therein, and for other purposes. Passed April 8, 1808. Sess. Laws (Webster & Skinner's ed.), vol. 5, p. 364. Section 5 directs "that all moneys which have or may come into the treasury belonging to the common school fund, and which are not directed by law to be invested in the stock of the Merchants' Bank, shall be loaned by the Comptroller, pursuant to the directions of the act entitled "An act to raise a fund for the encouragement of common schools," passed April 2, 1805.

An act to render the fund for the support of common schools more productive. Passed April 5, 1810. Sess. Laws (Webster & Skinner's ed.), vol. 6, p. 62. The first section authorized the Comptroller to invest all the moneys in the treasury, or to be received, belonging to the common school fund, in the stock of the Merchants' Bank, the Columbia Bank, the Hudson Bank, and the Mohawk Bank, until the amount reserved to the State should be exhausted. After such stock should be filled up, the moneys were to be invested on bond and mortgage.

An act concerning the clerks of the supreme court and for other purposes. Passed April 6, 1810. Sess. Laws (Webster & Skinner's ed.), vol. 6, p. 85. Section 5 set apart the surplus fees of the Supreme Court to increase the capital of the common school fund.

An act respecting the subscription of this State to the Mechanics' Bank in the city of New York, and for other purposes. Passed April 8, 1811. Sess. Laws (Webster & Skinner's ed.), vol. 6, p. 268. Section 4 directs the payment, on the first day of June, each year for five years, of \$2,500, "for the use and encouragement of common schools." The Comptroller was authorized to subscribe \$250,000 in the stock of the bank. This stock was to be paid for by the State.

An act for the establishment of common schools. Passed April 12, 1812. Sess. Laws (Webster & Skinner's ed.), vol. 6, p. 600. Section 3 directs when the increase of the fund shall be distributed.

An act to incorporate the stockholders of the Bank of America. Passed June 2, 1812. Sess. Laws (Webster & Skinner's ed.), vol. 6, p. 413. By section 12 it is enacted that the corporation shall pay \$400,000, or \$100,000 yearly, for four years to the Treasurer of the State, \$100,000 in ten years, \$100,000 in nineteen years. Of this sum \$400,000 is set apart for the encouragement of common schools; \$100,000 for opening and improving navigation; \$100,000 for the encouragement of literature.

An act to incorporate the stockholders of the City Bank of New York. Passed June 16, 1812. Sess. Laws (Webster & Skinner's ed.), vol. 6, p. 529. Section 3 requires the bank to pay to the State Treasurer \$125,000, in six equal annual payments for the use and benefit of common schools.

An act concerning the fund for the encouragement of schools. Passed April 9, 1813. The first section sets apart the "net proceeds of the vacant and unappropriated lands of the State," sold subsequent to April 2, 1805; the surplus moneys received for fees by the clerks of the supreme court, and the moneys paid into the State treasury by the Bank of America and the City Bank of New York, as "a permanent fund for the support of common schools." The remaining sections provide for the safe-keeping and investment of the money.

An act authorizing the Comptroller to loan moneys belonging to the school fund, and for other purposes. Passed April 12, 1813. Sess. Laws, p. 288. Authorizes the loan of \$45,500 in various sums, to individuals and corporations, on bond and mortgage at 7 per cent for five years.

An act for the better establishment of common schools. Passed April 15, 1814. Sess. Laws, p. 229. Section 3 directs how the income of the common school fund shall be distributed.

An act authorizing a loan to the Brighton Bridge company. Passed April 20, 1818. Sess. Laws, p. 186. \$10,000 from the common school fund to be loaned.

An act for the support of common schools. Passed April 12, 1819. Sess. Laws, p. 187. Section 3 regulates the distribution of the income.

An act to change and increase the fund for the support and encouragement of common schools, and for other purposes. Passed April 13, 1819. Sess. Laws, p. 274. Section 1 declares that the loan of 1792, and the loan of 1808, and the stock in the Merchants' Bank, and the net proceeds of all the lands which may escheat in the military tract, and the net proceeds of the fees of the clerks of the supreme court, shall be the "school fund." The rest of the act relates to the investment of the fund and the distribution of the revenue.

An act concerning quitrents, and to increase the literature and school funds respectively. Passed April 13, 1819. Sess. Laws, p. 291. Section 31 directs that the money received from quitrents shall be divided, and one-half appropriated to increase the literature fund, and one-half to increase the capital of the common school fund. Section 31 directs the money

to be invested in canal stock. The Constitution, signed November 10, 1821, adopted January, 1822, and which took effect January 1, 1823, ordained (*sec. 10, art. 7*): "The proceeds of all lands belonging to this State, except such parts thereof as may be reserved to public use or ceded to the United States, which shall hereafter be sold or disposed of, together with the fund denominated the common school fund, shall be and remain a perpetual fund, the interest of which shall be inviolably appropriated and applied to the support of common schools throughout the State."

An act concerning loan offices. Passed April 17, 1822. Sess. Laws, p. 265. Section 5 directs the school fund moneys to be invested in any of the public stocks of the State, at or below their par value; or, if they cannot be purchased at par, then in the next loan made by the commissioners of the canal fund.

An act for the improvement of the school fund. Passed March 8, 1823. Sess. Laws, p. 47. Section 1 directs sale of the school fund lands. Section 2 directs that the moneys be invested in the public stocks of the State, or in canal stocks.

An act for vesting the capital of the school fund. Passed November 24, 1824. Sess. Laws, p. 357. Directs the moneys belonging to the fund to be invested in canal fund stock at six per cent.

An act to assign the public lands in Otsego county, and the bonds on sales thereof heretofore made, to their respective funds. Passed November 24, 1824. Sess. Laws, p. 364. Divides the proceeds of the lands between the literature and school funds.

An act to increase the common school fund. Passed November 24, 1824. Sess. Laws, p. 386. \$40,000, directed to be paid by the third section of the act entitled "An act to authorize and provide for the erection of a fever hospital in the city of New York," passed April 24, 1823, transferred to the school fund.

An act relative to the sales of lands belonging to the people of this State, and to prevent trespasses thereon. Passed April 14, 1826. Sess. Laws, p. 209. Directs that within forty-eight hours the purchaser shall pay not less than one-eighth of the purchase-money, but that the conditions shall not exact more than one-half; or that some other collateral security may be demanded.

An act confirming the payment of certain moneys out of the treasury for the benefit of common schools, and for other purposes. Passed April 18, 1826. Sess. Laws, p. 355. Directs that moneys in the treasury belonging to the school fund may be invested in the stock of any loan for the benefit of the canal fund.

The Revised Statutes entitled of public instruction, title second, art. 2, of chap. 15, which took effect January 1, 1828, contains directions for the distribution of the income of the school fund. Sec. 1, title 4, of chap. 9, part 1, R. S., enacts as a law the clause inserted in the Constitution relative to the common school fund. Sec. 2 directs the distribution. Subsequent sections direct the manner of the investment. Section 65, of chap. 9 (being sec. 79 in Banks' 5th ed.), declares "the lands belonging to the common school fund, all escheated lands, and all other lands belonging to the people of this State, which are not directed by law to be kept for or applied to any specific purpose, shall be deemed unappropriated lands, within the meaning of this title." Does this section include "land under water," within its terms, or were such lands kept for the purposes of commerce? Or if this were so prior to 1850, did not chap. 283 of 1850, which permitted lands under water to be granted in perpetuity, or for beneficial enjoyment of the owner, bring such lands within section 65 aforesaid? And would not land in New York city and elsewhere, on the shores of the ocean and lakes, and on the banks of rivers, reclaimed from the water, filled in, and then granted for a valuable consideration, be "unappropriated land" and come within the terms of the Constitution and the Revised Statutes? Chap. 9, titles 4 and 5, part 1, Revised Statutes (Banks' 5th ed.), contains all the statutory enactments relating to the sale of the school fund lands, and the investment of the proceeds, passed since 1827.

By chapter 228, Laws of 1827, passed April 13, the balance of the loan of 1786, was transferred to the common school fund.

By the same law the sum of \$150,000 of the money received, and to be received from the sale of lands belonging to the canal fund, was transferred to the literature fund, the income to be distributed to the academies of the State in proportion to the number of pupils taught for six months during the preceding year, in classical studies, or in the higher branches of an English education.

By chapter 201, Laws of 1829, passed April 21, \$65,000 was directed to be borrowed on a five per cent stock, and the Comptroller was directed to invest the money in the treasury belonging to the school fund in said stock.

#### T.

An act to authorize the school district No. 13, in the town of Taghkanick, in the county of Columbia, to reorganize under the free school act, passed April 12, 1851. Passed April 2, 1855. Sess. Laws, p. 220.

An act to incorporate the city of Troy. Passed April 12, 1816. Sess. Laws, p. 129. The fortieth and concluding sections relate to schools. The first four wards were erected into a permanent district, with power in the common council to raise by tax \$500 annually to repair school-house and support a school, and also power to build a school-house, and raise by tax the necessary money. This law remained in force, substantially, until 1849.



An act to amend an act entitled "An act to prevent the sale of tickets of unauthorized lotteries, and to prevent the forgery of lottery tickets." Passed March 21, 1828. Sess. Laws, p. 100. Requires the mayor of Troy to apply all the money received by him for granting licenses to the vendors of lottery tickets in Troy, to the trustees of district No. 1, to be by them expended in the establishment and support of a high school on the monitorial plan.

An act concerning the first school district in the city of Troy. Passed April 12, 1842. Sess. Laws, p. 331.

An act concerning the first school district in the city of Troy. Passed March 1, 1843. Sess. Laws, p. 22.

An act in relation to the first school district in the city of Troy. Passed April 5, 1848. Sess. Laws, p. 292.

An act to amend the charter of the city of Troy, and to provide for the establishment of free schools in said city. Passed April 4, 1849. Sess. Laws, p. 299. This act made the city a school district and declared the schools free.

An act to amend an act entitled "An act to amend the charter of the city of Troy, and to establish free schools therein," passed April 14, 1849. Passed May 11, 1865. Sess. Laws, p. 1409.

An act in relation to free schools in the city of Troy, and school district No. 10, in the town of Lansingburgh. Passed April 10, 1850. Sess. Laws, p. 765.

An act to amend the act entitled "An act to amend the charter of the city of Troy, and to provide for the establishment of free schools in said city," passed April 4, 1849. Passed March 17, 1851. Sess. Laws, p. 55.

An act to amend an act in relation to free schools in the city of Troy, and school district No. 10, in the town of Lansingburgh, passed July 1, 1851; and to amend the act providing for free schools in the city of Troy, passed April 4, 1849. Passed March 28, 1854. Sess. Laws, p. 158.

An act to enable the board of education of union free school district No. 1, of the town of Tonawanda, Erie county, to borrow money to build a school-house, and to issue the bonds of the district therefor. Passed March 9, 1867. Sess. Laws, vol. 1, p. 106.

#### U.

An act for granting certain privileges to the college heretofore called King's college, for altering the name and charter thereof, and erecting an university within this State. Passed the first day of May, 1784.

An act to amend an act entitled "An act for granting certain privileges to the college heretofore called King's college, for altering the name and charter thereof, and erecting an university within this State," passed the first day of May, 1784. Passed November 26, 1784.

An act to institute an university within this State, and for other purposes therein mentioned. Passed 13th April, 1787. The 8th, 9th, 10th and 11th sections of this act confirm the charter granted in 1754 to the governors of the college of the province of New York; and ordered the style of it to be the trustees of Columbia college. The 8th section confirms in the college all "power, authority, rights, principles, franchises and immunities," which it possessed, and "all and singular the lands, tenements, hereditaments and real estate, goods, chattels, rents, annuities, moneys, books and other property" belonging to said college. It has been thought not advisable to include in this list the names of colleges and academies chartered by the Regents of the University, or by act of the Legislature. They may be found in the Convention Manual of 1867. Existing colleges and academies nearly all report annually to the Regents.

An act to incorporate the village of Utica. Passed April 7, 1817. Sess. Laws, p. 211. Section 27 applied all the school moneys coming to said village under the school laws to the support of a free school for the education of such poor children as were entitled to a gratuitous education. By section 28, all the school property of the twelfth district of Whitetown was vested in the trustees of the village of Utica for said free school. By section 29, the village was authorized to raise not exceeding \$100 a year for the support of such school.

An act relative to common schools in the village of Utica. Passed April 16, 1831. Sess. Laws, p. 187. Gives the trustees of the village power to establish schools at their pleasure, and distribute the public money as to them should seem most useful.

An act in relation to common schools in the city of Utica. Passed April 7, 1842. Sess. Laws, p. 163.

An act to amend an act entitled "An act in relation to common schools in the city of Utica, passed April 7, 1842." Passed April 8, 1844. Sess. Laws, p. 120.

An act in relation to common schools in the city of Utica. Passed February 2, 1846. Sess. Laws, p. 8.

An act in relation to common schools in the city of Utica. Passed March 16, 1850. Sess. Laws, p. 74.

An act to amend an act entitled "An act in relation to common schools in the city of Utica," passed March 16, 1850. Passed April 13, 1852. Sess. Laws, p. 395.

An act to amend several acts in relation to the common schools in the city of Utica. Passed April 17, 1854. Sess. Laws, p. 723.

An act to amend certain acts in relation to common schools in the city of Utica. Passed April 15, 1857. Sess. Laws, vol. 2, p. 221.

An act respecting the school district library in the city of Utica. Passed April 16, 1858. Sess. Laws, p. 425.

An act in relation to the common schools of the city of Utica. Passed March 23, 1867. Sess. Laws, vol. 1, p. 185.

An act to authorize the common council of the city of Utica to borrow money to erect school-houses. Passed April 16, 1867. Sess. Laws, vol. 1, p. 934.

## V.

An act confirming the proceedings under which a union free school was formed by the consolidation of school districts No. 8 of town of Vernon, Oneida county, No. 22 of the town of Lenox, Madison county, and joint district No. 26 of said towns of Vernon and Lenox, and authorizing the ceding by the State of New York of a portion of the public square in the village of Oneida Castleton, together with the academy buildings thereon, to the board of education of said union free school for the sole use of said board of said school, and to refund taxes collected in said district No. 22 for the erection of a new school-house. Passed April 11, 1865. Sess. Laws, p. 700.

An act to authorize the supervisors of the towns of Virgil, Lapeer and Harford, in the county of Cortland, to sell and convey certain lands, and invest the sums received therefor for the support of common schools. Passed April 17, 1860. Sess. Laws, p. 994.

## W.

An act in relation to school district No. 5, in the town of Warsaw, in the county of Genesee. Passed May 25, 1836. Sess. Laws, p. 713. Authorized to sell school property, and divide the proceeds equitably between the two districts formed by a division of No. 5.

An act for the relief of consolidated school district No. 10, in the town of Warsaw, county of Wyoming. Passed June 17, 1853.

An act for the relief of the commissioners of common schools, in the town of Washington, in the county of Dutchess. Passed February 28, 1822. Corrects apportionment of school moneys, owing to a mistake in the census.

An act to authorize the trustees of school district No. 7, in the town of Washington, in the county of Dutchess, to fix upon and procure suitable lands as a site for a school-house, and necessary privileges for the same in said district. Passed April 7, 1856. Sess. Laws, p. 188.

An act in relation to the board of education of union free school district No. 1, of Watertown, in the county of Saratoga. Passed April 10, 1857. Sess. Laws, vol. 1, p. 698.

An act to authorize school district No. 1, in the town of Waterloo, to raise a tax. Passed October 26, 1847. Sess. Laws, p. 441.

An act to provide for free schools in the village of Waterloo. Passed April 11, 1853. Sess. Laws, p. 279.

An act in relation to school district No. 1, in the town of Waterloo, in the county of Seneca. Passed April 10, 1855. Sess. Laws, p. 367.

An act in relation to Waterloo union school, and school districts Nos. 1 and 15, in the town of Waterloo, county of Seneca. Passed February 16, 1859. Sess. Laws, p. 38.

An act to confirm certain proceedings of the trustees of school district No. 3, of the village and town of Watertown. Passed April 8, 1842. Sess. Laws, p. 176.

An act to authorize the trustees of school district No. 3, of Watertown, to borrow money to pay for a school-house. Passed February 7, 1856. Sess. Laws, p. 15.

An act in relation to the public schools in the village of Watertown. Passed April 21, 1865. Sess. Laws, p. 918.

An act to amend "An act in relation to the public schools in the village of Watertown," passed April 21, 1865. Passed March 25, 1867. Sess. Laws, vol. 1, p. 233.

An act authorizing the assessment and collection of a certain sum of money in school district No. 2, in the town of Watervliet, county of Albany. Passed March 15, 1832. Sess. Laws, p. 71.

An act to authorize the trustees of school district No. 23, of the town of Watervliet, to issue bonds to pay school debt. Passed April 20, 1866. Sess. Laws, p. 1575.

An act to erect a union school district in the village of Watkins, and to create a board of education therein, with power of taxation and other powers, for school purposes. Passed April 3, 1863. Sess. Laws, p. 93.

An act in relation to the Weedsport union school. Passed April 14, 1858. Sess. Laws, p. 334.

An act to enable the board of education of union free school district No. 1, Wellsville, New York, to settle a dispute in regard to the boundary lines of the school-house site. Passed April 3, 1866. Sess. Laws, p. 807.

An act to authorize school district No. 2, of the town of Westchester, in the county of Westchester, to borrow money, and to issue bonds for the same. Passed April 18, 1866. Sess. Laws, p. 1413.

An act to incorporate school district No. 1, of the town of West Farms, Westchester county. Passed March 31, 1852. Sess. Laws, p. 151.

An act to establish free schools in district No. 1, in the town of West Farms, Westchester county. Passed June 17, 1853. Sess. Laws, p. 751.

An act to amend an act entitled "An act to establish free schools in district No. 1, of the town of West Farms, Westchester county," passed June 17, 1853. Passed April 14, 1866. Sess. Laws, p. 1262.

An act to authorize the board of education of the union school district No. 11, in the town of Whitehall, to borrow money to build a school-house in said district. Passed May 23, 1867. Sess. Laws, vol. 2, p. 2384.

An act in relation to common schools in the town of Williamsburgh, in the county of Kings. Passed April 23, 1844. Sess. Laws, p. 299.

An act for the relief of John Hutchings. Passed May 8, 1845. Sess. Laws, p. 152. Authorizing the board of supervisors to raise on district No. 1, Williamsburgh, \$3,000, to pay said Hutchings for building a school-house.

An act for the relief of James D. Sparkman, William Leaycraft and Samuel Cox. Passed May 14, 1845. Authorizes a tax on district No. 3, Williamsburgh, to pay certain expenses.

An act to authorize the trustees of school district No. 3, in the town of Williamsburgh, to borrow money for building a school-house. Passed November 10, 1847. Sess. Laws, p. 448.

An act to amend an act entitled "An act in relation to the common schools of the city of Williamsburgh," passed April 14, 1851. Passed April 14, 1852. Sess. Laws, p. 413.

An act in relation to the common schools of the city of Williamsburgh. Passed April 14, 1851. Sess. Laws, p. 323.

An act to amend the act entitled "An act to consolidate the cities of Brooklyn and Williamsburgh and the town of Bushwick into one municipal government, and to incorporate the same," passed April 17, 1854. Passed April 6, 1857. Sess. Laws, vol. 1, p. 569. Section 11 grants power to organize a normal school.

An act to authorize the trustees of the school districts at the village of Williamsville, in the town of Amherst and county of Erie, to make separate rate bills for the higher and primary departments of the schools kept in said districts. Passed April 30, 1846. Sess. Laws, p. 132.

An act to enlarge and fix the boundaries of union free school district No. 1, lying in the towns of Wolcott, Huron and Butler, in Wayne county. Passed April 16, 1866. Sess. Laws, p. 1311.

An act to divide the county of Wyoming into two school commissioner districts, and provide for the appointment of a school commissioner. Passed March 6, 1853. Sess. Laws, p. 48.

#### Y.

An act to divide school district No. 2, of the town of Yonkers, into separate districts, and to constitute and define the powers of the board of education in the new district. Passed April 17, 1861. Sess. Laws, p. 654.

An act in relation to school district No. 6, in the town of Yonkers. Passed March 23, 1862. Sess. Laws, p. 222.

An act to enable the board of education of school district No. 6, in the town of Yonkers, to mortgage the school property, when authorized so to do by a vote of the district. Passed May 1, 1865. Sess. Laws, p. 1309.

An act authorizing the trustees of school district No. 8, in the town of York, to sell the old school lot belonging to the said district. Passed November 11, 1823. Sess. Laws of 1823 and 1829, p. 11; amended by act of April 11, 1829, p. 216.

An act in relation to school district No. 8, in the town of York. Passed January 21, 1836. Sess. Laws, p. 7. Authorizes the sale of certain village lots, and the investment of the money received, or its expenditure in repairing and building school-houses.

# SCHOOL COMMISSIONER DISTRICTS

## AND CITIES HAVING SPECIAL SCHOOL ACTS.

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### ALBANY COUNTY.

FIRST DISTRICT. Towns of Bethlehem, Coeymans and New Scotland.

SECOND DISTRICT. Towns of Berne, Rensselaerville and Westerlo.

THIRD DISTRICT. Towns of Knox, Guilderland and Watervliet.

The city of Albany is organized under a special school act.

### ALLEGANY COUNTY.

FIRST DISTRICT. Towns of Allen, Almond, Angelica, Belfast, Birdsall, Burns, Canadea, Centerville, Granger, Grove, Hume, New Hudson, Rushford and West Almond.

SECOND DISTRICT. Towns of Alfred, Alma, Amity, Andover, Bolivar, Clarksville, Cuba, Friendship, Genesee, Independence, Scio, Ward, Wellsville, Willing and Wirt.

### BROOME COUNTY.

FIRST DISTRICT. Towns of Chenango, Colesville, Conklin, Kirkwood, Port Crane, Sanford and Windsor.

SECOND DISTRICT. Towns of Barker, Binghamton, Lisle, Maine, Nanticoke, Triangle, Union, Vestal.

The city of Binghamton is organized under a special school act.

### CATTARAUGUS COUNTY.

FIRST DISTRICT. Towns of Allegany, Ashford, Carrolton, Farmersville, Franklinville, Freedom, Hinsdale, Humphrey, Ischua, Lyndon, Machias, Olean, Portville, and Yorkshire.

SECOND DISTRICT. Towns of Coldspring, Conewango, Dayton, East Otto, Ellicottville, Great Valley, Leon, Little Valley, Mansfield, Napoli, New Albion, Otto, Perrysburgh, Persia, Randolph, Salamanca and South Valley.

### CAYUGA COUNTY.

FIRST DISTRICT. Towns of Cato, Conquest, Ira, Mentz, Montezuma, Sterling, Throop and Victory.

SECOND DISTRICT. Towns of Aurelius, Brutus, Fleming, Ledyard, Niles, Owasco, Sennett and Springport.

THIRD DISTRICT. Towns of Genoa, Locke, Moravia, Scipio, Sempronius, Summer Hill and Venice.

The city of Auburn is organized under a special school act.

### CHAUTAUQUA COUNTY.

FIRST DISTRICT. Towns of Busti, Chautauqua, Clymer, Ellery, French Creek, Harmony, Mina, Portland, Ripley, Sherman, Stockton and Westfield.

SECOND DISTRICT. Towns of Arkwright, Carroll, Charlotte, Cherry Creek, Dunkirk, Ellicott, Ellington, Gerry, Hanover, Kiantoué, Poland, Pomfret, Sheridan and Villenova.

### CHEMUNG COUNTY.

Consists of a single district.

The city of Elmira is organized under a special school act.

### CHENANGO COUNTY.

FIRST DISTRICT. Towns of Columbus, Linklaen, New Berlin, North Norwich, Norwich, Otselic, Pharsalia, Pitcher, Plymouth, Sherburne and Smyrna.

SECOND DISTRICT. Towns of Afton, Bainbridge, Coventry, Greene, German, Guilford, McDonough, Oxford, Preston and Smithville.

**CLINTON COUNTY.**

FIRST DISTRICT. Towns of Ausable, Black Brook, Dannemora, Peru, Plattsburgh, Saranac and Schuyler Falls.

SECOND DISTRICT. Towns of Altona, Beekmantown, Champlain, Chazy, Clinton, Ellenburgh and Mooers.

**COLUMBIA COUNTY.**

FIRST DISTRICT. Towns of Ancram, Claverack, Clermont, Copake, Gallatin, German-town, Greenport, Livingston and Taghkanick.

SECOND DISTRICT. Towns of Austerlitz, Canaan, Chatham, Ghent, Hillsdale, Kinderhook, New Lebanon, Stockport and Stuyvesant.

The city of Hudson is organized under a special school act.

**CORTLAND COUNTY.**

FIRST DISTRICT. Towns of Cincinnatus, Cortlandville, Freetown, Harford, Lapeer, Marathon, Virgil and Willett.

SECOND DISTRICT. Towns of Cuyler, Homer, Preble, Scott, Solon, Taylor and Truxton.

**DELAWARE COUNTY.**

FIRST DISTRICT. Towns of Colchester, Franklin, Hamden, Hancock, Masonville, Sidney, Tompkins and Walton.

SECOND DISTRICT. Towns of Andes, Bovina, Davenport, Delhi, Harpersfield, Kortright, Meredith, Middletown, Roxbury and Stamford.

**DUTCHESS COUNTY.**

FIRST DISTRICT. Towns of Amenia, Beekman, Dover, East Fishkill, Fishkill, La Grange, Northeast, Pawling, Pine Plains, Stanford, Union Vale and Washington.

SECOND DISTRICT. Towns of Clinton, Hyde Park, Milan, Pleasant Valley, Poughkeepsie, Redhook and Rhinebeck.

The city of Poughkeepsie is organized under a special school act.

**ERIE COUNTY.**

FIRST DISTRICT. Towns of Alden, Amherst, Cheekwanga, Clarence, Grand Island, Lancaster, Newstead and Tonawanda.

SECOND DISTRICT. Towns of Aurora, East Hamburg, Eden, Elma, Evans, Hamburg, Marilla, Wales and West Seneca.

THIRD DISTRICT. Towns of Boston, Brant, Colden, Concord, Collins, Holland, North Collins and Sardinia.

The city of Buffalo is organized under a special school act.

**ESSEX COUNTY.**

FIRST DISTRICT. Towns of Chesterfield, Elizabethtown, Essex, Jay, Keene, Lewis, North Elba, St. Armand, Willsborough and Wilmington.

SECOND DISTRICT. Towns of Crown Point, Minerva, Moriah, Newcomb, North Hudson, Schroon, Ticonderoga and Westport.

**FRANKLIN COUNTY.**

FIRST DISTRICT. Towns of Belmont, Brighton, Burke, Chateaugay, Duane, Franklin, Harrietstown and Malone.

SECOND DISTRICT. Towns of Bangor, Bombay, Brandon, Constable, Dickinson, Fort Covington, Moira and Westville.

**FULTON COUNTY** — Consists of a single district.

**GENESEE COUNTY** — Consists of a single district.

**GREENE COUNTY.**

FIRST DISTRICT. Towns of Athens, Cairo, Catskill, Halcott, Hunter, Jewett and Lexington.

SECOND DISTRICT. Towns of Ashland, Coxsackie, Durham, Greenville, New Baltimore, Prattsville and Windham.

**HAMILTON COUNTY** — Consists of a single district.

**HERKIMER COUNTY.**

FIRST DISTRICT. Towns of Fairfield, Herkimer, Little Falls, Manheim, Newport, Norway, Ohio, Russia, Salisbury and Wilmurt.

SECOND DISTRICT. Towns of Columbia, Danube, Frankfort, German Flats, Litchfield, Schuyler, Stark, Warren and Winfield.

**JEFFERSON COUNTY.**

FIRST DISTRICT. Towns of Adams, Brownville, Ellisburgh, Henderson, Hounsfield, Lorraine, Rodman and Worth.

SECOND DISTRICT. Towns of Antwerp, Champion, Le Ray, Philadelphia, Rutland, Watertown and Wilna.

THIRD DISTRICT. Towns of Alexandria, Cape Vincent, Clayton, Lyme, Orleans, Pamela and Theresa.

**KINGS COUNTY**—Consists of a single district, excluding Brooklyn.  
The city of Brooklyn is organized under a special school act.

**LEWIS COUNTY.**

**FIRST DISTRICT.** Towns of Greig, High Market, Lewis, Leyden, Martinsburgh, Osceola, Turin and West Turin.  
**SECOND DISTRICT.** Towns of Croghan, Denmark, Diana, Harrisburgh, Lowville, Montague, New Bremen, Pinckney and Watson.

**LIVINGSTON COUNTY.**

**FIRST DISTRICT.** Towns of Avon, Caledonia, Conesus, Geneseo, Groveland, Leicester, Lima, Livonia and York.  
**SECOND DISTRICT.** Towns of Mount Morris, North Dansville, Nunda, Ossian, Portage, Sparta, Springwater and West Sparta.

**MADISON COUNTY.**

**FIRST DISTRICT.** Towns of Brookfield, De Ruyter, Eaton, Georgetown, Hamilton, Lebanon, Madison and Nelson.  
**SECOND DISTRICT.** Towns of Cazenovia, Fenner, Lenox, Smithfield, Stockbridge and Sullivan.

**MONROE COUNTY.**

**FIRST DISTRICT.** Towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perrinton, Pittsford, Rush and Webster.  
**SECOND DISTRICT.** Towns of Clarkson, Chili, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland.  
The city of Rochester is organized under a special school act.

**MONTGOMERY COUNTY**—Consists of a single district.

**NEW YORK** city is organized under a special school act.

**NIAGARA COUNTY.**

**FIRST DISTRICT.** Towns of Cambria, Lockport, Pendleton, Royalton and Wheatfield.  
**SECOND DISTRICT.** Towns of Hartland, Lewiston, Newfane, Niagara, Porter, Somerset and Wilson.  
The city of Lockport is organized under a special school act.

**ONEIDA COUNTY.**

**FIRST DISTRICT.** Towns of Deerfield, Floyd, Marcy, New Hartford and Whitestown.  
**SECOND DISTRICT.** Towns of Augusta, Bridgewater, Kirkland, Marshall, Paris, Sangerfield, Vernon and Westmoreland.  
**THIRD DISTRICT.** Towns of Camden, Florence, Rome, Verona and Vienna.  
**FOURTH DISTRICT.** Towns of Annsville, Ava, Booneville, Lee, Remsen, Steuben, Trenton and Western.  
The city of Utica is organized under a special school act.

**ONONDAGA COUNTY.**

**FIRST DISTRICT.** Towns of Camillus, Clay, Elbridge, Lysander, Salina and Van Buren.  
**SECOND DISTRICT.** Towns of Geddes, Marcellus, Onondaga, Otisco, Skaneateles, Spafford and Tully.  
**THIRD DISTRICT.** Towns of Cicero, DeWitt, Fabius, Lafayette, Manlius and Pompey.  
The city of Syracuse is organized under a special school act.

**ONTARIO COUNTY.**

**FIRST DISTRICT.** Towns of Farmington, Gorham, Hopewell, Manchester, Phelps and Seneca.  
**SECOND DISTRICT.** Towns of Bristol, Canadice, Canandaigua, East Bloomfield, Naples, Richmond, South Bristol, Victor and West Bloomfield.

**ORANGE COUNTY.**

**FIRST DISTRICT.** Towns of Blooming Grove, Cornwall, Monroe, Montgomery, Newburgh and New Windsor.  
**SECOND DISTRICT.** Towns of Chester, Crawford, Deerpark, Goshen, Greenville, Hamptonburgh, Minisink, Mount Hope, Walkill, Warwick and Wawayanda.  
The city of Newburgh is organized under a special school act.

**ORLEANS COUNTY**—Consists of a single district.

**OSWEGO COUNTY.**

**FIRST DISTRICT.** Towns of Granby, Hannibal, New Haven, Oswego, Scriba and Volney.  
**SECOND DISTRICT.** Towns of Amboy, Constantia, Hastings, Palermo, Parish, Schroepel and West Monroe.  
**THIRD DISTRICT.** Towns of Albion, Boylston, Mexico, Orwell, Redfield, Richland, Sandy Creek and Williamstown.  
The city of Oswego is organized under a special school act.

**OTSEGO COUNTY.**

**FIRST DISTRICT.** Towns of Cherry Valley, Decatur, Exeter, Maryland, Middlefield, Otsego, Plainfield, Richfield, Roseboom, Springfield, Westford and Worcester.

**SECOND DISTRICT.** Towns of Burlington, Butternuts, Edmeston, Hartwick, Laurens, Milford, Morris, New Lisbon, Oneonta, Otsego, Pittsfield and Unadilla.

**PUTNAM COUNTY** — Consists of a single district.

**QUEENS COUNTY.**

**FIRST DISTRICT.** Towns of Flushing, North Hempstead and Oyster Bay.

**SECOND DISTRICT.** Towns of Hempstead, Jamaica and Newtown.

**RENSSELAER COUNTY.**

**FIRST DISTRICT.** Towns of Berlin, Grafton, Hoosick, Lansingburgh, Petersburg, Pittstown and Schaghticoke.

**SECOND DISTRICT.** Towns of Brunswick, East Greenbush, Greenbush, Nassau, North Greenbush, Poestenkill, Sandlake, Schodack and Stephentown.

The city of Troy is organized under a special school act.

**RICHMOND COUNTY**—Consists of a single district.

**ROCKLAND COUNTY**—Consists of a single district.

**ST. LAWRENCE COUNTY.**

**FIRST DISTRICT.** Towns of DeKalb, Depeyster, Fine, Fowler, Gouverneur, Hammond, Macomb, Morristown, Oswegatchie, Pitcairn and Rossie.

**SECOND DISTRICT.** Towns of Canton, Colton, Edwards, Hermon, Lisbon, Madrid, Norfolk, Pierrepont, Russell and Waddington.

**THIRD DISTRICT.** Towns of Brasher, Hopkinton, Lawrence, Louisville, Massena, Parishville, Potsdam and Stockholm.

**SARATOGA COUNTY.**

**FIRST DISTRICT.** Towns of Ballston, Charlton, Clifton Park, Galway, Halfmoon, Malta, Milton, Stillwater and Waterford.

**SECOND DISTRICT.** Towns of Corinth, Day, Edinburgh, Greenfield, Hadley, Moreau, Northumberland, Providence, Saratoga, Saratoga Springs and Wilton.

**SCHENECTADY COUNTY**—Consists of a single district.

The city of Schenectady is organized under a special school act.

**SCHOHARIE COUNTY.**

**FIRST DISTRICT.** Towns of Broome, Blenheim, Conesville, Esperance, Gilboa, Middleburgh, Schoharie and Wright.

**SECOND DISTRICT.** Towns of Carlisle, Cobleskill, Fulton, Jefferson, Richmondville, Seward, Sharon and Summit.

**SCHUYLER COUNTY**—Consists of a single district.

**SENECA COUNTY**—Consists of a single district.

**STEBEN COUNTY.**

**FIRST DISTRICT.** Towns of Avoca, Bath, Bradford, Cohocton, Prattsburgh, Pulteney, Urbana, Wayne and Wheeler.

**SECOND DISTRICT.** Towns of Addison, Cameron, Campbell, Caton, Corning, Erwin, Hornby, Lindley, Rathbone, Thurston, Tuscarora and Woodhull.

**THIRD DISTRICT.** Towns of Canisteo, Dansville, Fremont, Greenwood, Hartsville, Hornellsville, Howard, Jasper, Troupsburgh, Wayland and West Union.

**SUFFOLK COUNTY.**

**FIRST DISTRICT.** Towns of Easthampton, Riverhead, Southampton, Southold and Shelter Island.

**SECOND DISTRICT.** Towns of Brookhaven, Huntington, Islip and Smithtown.

**SULLIVAN COUNTY**—Consists of a single district.

**TIOGA COUNTY**—Consists of a single district.

**TOMPKINS COUNTY**—Consists of a single district.

**ULSTER COUNTY.**

**FIRST DISTRICT.** Towns of Hurley, Kingston and Saugerties.

**SECOND DISTRICT.** Towns of Esopus, Gardiner, Lloyd, Marletown, Marlborough, New Paltz, Plattekill, Rosendale and Shawangunk.

**THIRD DISTRICT.** Towns of Denning, Hardenburgh, Olive, Rochester, Shandaken, Wawarsing and Woodstock.

WARREN COUNTY—Consists of a single district.

WASHINGTON COUNTY.

FIRST DISTRICT. Towns of Argyle, Cambridge, Easton, Fort Edward, Greenwich, Jackson, Salem and White Creek.

SECOND DISTRICT. Towns of Dresden, Fort Ann, Granville, Hampton, Hartford, Hebron, Kingsbury, Putnam and Whitehall.

WAYNE COUNTY.

FIRST DISTRICT. Towns of Butler, Galen, Huron, Lyons, Rose, Savannah, Sodus and Wolcott.

SECOND DISTRICT. Towns of Arcadia, Macedon, Marion, Ontario, Palmyra, Walworth and Williamson.

WESTCHESTER COUNTY.

FIRST DISTRICT. Towns of Eastchester, Morrisania, Westchester, West Farms and Yonkers.

SECOND DISTRICT. Towns of Greenburgh, Harrison, Mamaroneck, Mount Pleasant, New Rochelle, North Castle, Pelham, Poundridge, Rye, Scarsdale and White Plains.

THIRD DISTRICT. Towns of Bedford, Cortlandt, Lewisboro, New Castle, North Salem, Ossining, Somers and Yorktown.

WYOMING COUNTY.

FIRST DISTRICT. Towns of Attica, Bennington, Covington, Middlebury, Orangeville, Perry, Sheldon and Warsaw.

SECOND DISTRICT. Towns of Arcade, Castile, Eagle, Genesee Falls, Gainesville, Java Pike and Wethersfield.

YATES COUNTY—Consists of a single district.



# LOCAL LAWS AND REGULATIONS

RESPECTING

## COMMON SCHOOLS.

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### ALBANY.

*Chap. 240, Laws of 1830, p. 260; Chap. 9, Laws of 1831, p. 7; Chap. 128, Laws of 1844, p. 115; Chap. 516, Laws of 1855, p. 951; Chap. 404, Laws of 1852, p. 676; Chap. 559, Laws of 1853, p. 1037; Chap. 444, Laws of 1866, p. 986, Vol. 1, as amended by Chap. 11, § 1, Laws of 1867, p. 37.*

[*Chap. 240, Laws of 1830, page 260.*]

The eleventh section of this law has been repealed directly, and the rest of the law by implication, and as incompatible with subsequent laws, except the third, fourth and fifth sections, which are still in force so far as they confer the power to divide the city east of Perry street into school districts, and to hire school-houses and school rooms; although the other powers granted in these sections have been taken away or superseded.

§ 3. The commissioners so elected shall form a board, with power, from time to time, to form the said city into school districts, not exceeding five in number east of Perry street. They shall also appoint three trustees for each district, to hold their offices for one year, and shall fill any vacancy which shall happen.

§ 4. The said commissioners, with the consent of the common council, may form another or other school districts in the said city of Albany.

§ 5. The trustees of each district, or a majority of them, shall, within their respective districts, have power to hire a school-house or rooms, and furnish the same with necessary fuel and appurtenances, appoint a collector, hire a teacher or teachers, fix the rate of tuition fees, not exceeding two dollars a quarter for any scholar, and exempt from the payment of teachers' wages any indigent persons, within the district, they shall think proper.

Section fifteen erected all that part of the city west of Perry street into one and a separate district, including the territory between said street and Schenectady.

[*Chap. 9, Laws of 1831, page 7.*]

This law declared that the said district west of Perry street should be known and distinguished as district number six in the city of Albany.

[*Chap. 128, Laws of 1844, page 115.*]

The first, second and third sections of this act are repealed by the first, second, third and fourth sections of chapter 444, Laws of 1866, and the fourth and fifth sections are directly repealed.

§ 6. All school moneys whatsoever, belonging to said district schools, whether received from the State, raised by tax, or collected on school rates, shall be deposited with the chamberlain of said city, until drawn, from time to time, by duly certified orders of said board of commissioners; and said orders shall set forth the object of each payment, and be signed by the officers of said board; provided, always, that nothing in this act shall be so construed as to authorize said board to incur any obligation that shall increase the taxes of said city.

[Chap. 516, *Laws of 1855, page 951.*]

The third, fifth and sixth sections of this chapter are directly repealed by chapter 444, *Laws of 1866*, and the rest of the act is entirely superseded by said chapter 444.

[Chap. 404, *Laws of 1852, p. 676.*]

SECTION 1. It shall be the duty of the board of supervisors of the county of Albany to cause such sum of money, not exceeding five thousand dollars in any one year, to be added to the amount now required to be raised annually by tax in the city of Albany, under the provisions of the act entitled "An act to establish free schools throughout the State," passed April twelfth, one thousand eight hundred and fifty-one, as said board of supervisors shall, from time to time, be requested so to do by a concurrent resolution adopted by the several boards of common council and school commissioners of said city, by a vote of two-thirds of all the members of said boards respectively.

§ 2. The money raised, in any year, in pursuance of the preceding section of this act, shall be deposited with the chamberlain of the city of Albany, and shall form a part of the school moneys for the use of the district schools of said city.

[Chap. 559, *Laws of 1853, p. 1037.*]

SECTION 1. The inhabitants of the city of Albany residing west of Perry street entitled to vote at general elections in said city are hereby authorized to elect, in the same manner that other city officers are required by law to be elected, once in every two years, a superintendent of common schools for the territory of said city lying west of Perry street, who shall be a resident of, and legal voter in, said territory, and shall hold his office for two years, and possess therein the same powers, perform the same duties, and be subject to the same restrictions, liabilities and penalties as are now conferred and imposed by law upon town superintendents of common schools in the towns for which they are elected, except as hereinafter provided.

§ 2. The first election under this act shall be made at the next general election, to be held in said city on the first Tuesday of November next, and it shall be the duty of the inspectors of elections of the several wards in which said inhabitants are entitled to vote, to receive at said election, and at every subsequent election of such officer, the ballots which may be given for an officer, and deposit the same in a ballot box to be provided by the clerk of said city for that purpose; and such ballots shall be canvassed, and the result ascertained in the same manner as for other officers to be elected at such elections. In case of a vacancy in said office, such vacancy shall be filled by the justices of peace of said city, by a warrant under their hands, and the person so appointed shall hold for the unexpired term.

§ 3. The person so elected or appointed shall enter upon the duties of his office within ten days after such election or appointment, upon his executing a bond with one or more sureties to the supervisors of the ninth and tenth wards of said city, to be approved by them, with a penalty in double the amount of school moneys received by all the school districts within said territory during the preceding year, which bond shall be filed in the office of the clerk of the county of Albany, and in case of any default by which the condition of said bond shall be forfeited, the said supervisors shall sue thereon in their name of office, and the money recovered by them shall be paid to said commissioners, to be applied by them to the support of the schools within said territory.

§ 4. It shall be the duty of the person so elected or appointed, at the same time, and in the same manner as is now required by law of town superintendents, to make and deliver to the clerk of said commissioners a report in writing containing the same information as is required by section nineteen of chapter four hundred and eighty of the *Laws of eighteen hundred and forty-seven*, and the said commissioners shall, as soon thereafter as they shall receive the same, pay over to the person so appointed the public moneys to which the districts upon said territory shall by law be entitled.

§ 5. All the provisions of law now in force relating to the common schools of this State, shall apply to the districts now organized within said territory, or which may be hereafter organized by said superintendent of common schools, so far as they are consistent with the provisions of this act.

[Chap. 444, *Laws of 1866, p. 986, vol. 1.*]

SECTION 1. John O. Cole, George W. Carpenter, Michael Delehanty, Charles P. Easton, Paul F. Cooper, John G. Treadwell, Charles Van Benthuyssen, Stewart McKissick, James L. Babcock, Bradford R. Wood, Jacob S. Mosher, and William C. McHarg, shall constitute a body to be designated and known as "The board of public instruction of the city of Albany." The members of said board shall be classified in the manner and shall hold their office for the terms, respectively, as hereinafter provided.

§ 2. The said members of the board of public instruction are hereby divided into three classes, of four members each, as follows: John O. Cole, George W. Carpenter, Michael Delehanty and Charles P. Easton shall compose the first class, and shall hold their office for the term of three years; Paul F. Cooper, John G. Treadwell, Charles Van Benthuyssen and Stewart McKissick shall compose the second class, and shall hold their office for the term of two years, and James L. Babcock, Bradford R. Wood, Jacob S. Mosher and William C. McHarg shall compose the third class, and shall hold their office for the term of one year. The several terms of office of the members aforesaid shall commence on the first day of

June, one thousand eight hundred and sixty-six, and they shall continue to hold their office until their successors shall be elected as hereinafter provided.

§ 3. The members of the said board shall hold their first meeting on the first day of June, one thousand eight hundred and sixty-six, at four o'clock in the afternoon of that day, or as soon thereafter as may be, for the purpose of organization. They shall thereupon appoint one of their number president, who shall exercise all the powers usually incident to such office; they shall also appoint a suitable person, other than a member of their body, superintendent of schools for the city of Albany, east of Perry street, who shall by virtue of his office act as secretary of the board, and shall exercise all such powers, and shall discharge all such other duties as the board shall from time to time direct, and shall be allowed such compensation for his services as the said board may at any time determine, not, however, to exceed, in rate, the sum of two thousand dollars per annum. *[As amended by chap. 11, § 1, laws of 1867.]*

§ 4. Four members of said board shall be chosen by ballot at the annual election to be held in said city in the year one thousand eight hundred and sixty-seven, for the election of charter and ward officers, and also at each and every succeeding annual election thereafter, by the electors thereof, who shall be at the time of the election residents of that part of the city which lies east of the line of Perry street. The clerk of the common council of said city shall cause the necessary ballot boxes to be provided at the expense of the city, for the use of the inspectors of election of the several election districts of the city which lie wholly or partly east of said Perry street, in holding said election. All qualified voters at such election for city officers, who shall at the time reside in the election district in which they shall severally offer to vote, and east of said Perry street, shall be entitled to vote for two persons for the office of member of the board of public instruction, each of whom shall be at the time an elector and resident of that part of the city for which the officers are to be chosen. The ballot shall contain, written or printed, the names of the persons voted for, not exceeding two in number, with a proper designation, and shall be so folded as to conceal its contents, and to be indorsed "public schools." The ballot, on being received by the inspectors, shall be deposited by them in the box provided for that purpose. The election in all other respects shall be conducted in accordance with the provisions of the several existing laws relating to the election of civil officers by the people, so far as the same are applicable, and any person who may offer to vote at the election of the officers provided to be chosen by this act, may be challenged as to his qualifications as an elector as in other cases, and shall be subject to the like penalties for false swearing and improper voting as are now provided by the laws relating to elections, for like offenses. The several boards of inspectors of elections, after canvassing and estimating the number of votes received by them for each candidate for said office, shall certify the result to the common council of the city, who shall, at the time they take action upon the returns of the said inspectors of election relative to the other officers chosen at said election, determine the final result; and the four persons who shall appear from the returns made by said inspectors to have received the greatest number of votes for the office, shall be declared by that body to be duly elected, and shall each hold his office for the term of three years, from and after the first day of June next following the election, and until his successor shall be elected. If, however, upon the examination of said returns, it be found and determined by the common council that no four of the persons voted for for the said office have received the greatest number of votes, by reason of two or more of the candidates receiving an equal number of votes, then it shall be deemed a failure to elect any one of them, and the incumbents, whose term of office would have expired on the first day of June next following, shall continue in office for one more year and until their successors shall be elected; and the electors who shall be entitled to vote at the next annual election for members of the board shall be allowed to vote for four persons, two of whom shall be designated in the ballot for the short term, and the four persons thus designated, who shall have received the greatest number of votes for the said office, shall be deemed elected in the place of the four members holding over, and shall hold their office for the remainder of the term and until their successors shall be elected.

§ 5. Any member of said board of public instruction may be removed from office for cause, by the affirmative votes of at least eight members of their body, provided, always, that such member shall be served with a copy of the charges preferred against him and notice of trial, not less than twenty days previous to the day fixed for the hearing of the matter, by leaving such copy and notice at his residence in the city, or by sending the same to his address by mail: the accused member, on his appearing before the board for trial, shall have the usual privileges in similar cases extended to him in his defense.

§ 6. The said board shall have power to fill all vacancies in the office of member of their body that may occur from any cause, by the appointment of any person eligible to said office; such appointment shall be made by ballot, and shall require not less than eight votes for that purpose; the person so appointed shall hold his office until a successor shall be chosen at the next annual election for charter and ward officers. At said election the electors who shall at the time reside within the limits prescribed in section four of this act shall be entitled to vote for a person to fill such vacancy, and shall place in the ballot which contains the names of the two persons voted for as members of the board then to be chosen, for the full term, and so designated; the name of the person to be chosen for the short term shall also be properly designated, and the person receiving the greatest number of votes at said election for the short term shall be declared elected in the place of the person appointed, as aforesaid, to fill the vacancy.

§ 7. On and after the first day of June, in the year one thousand eight hundred and sixty-six, the said board of public instruction shall have the control and management of the several public schools in the said city of Albany, east of the line of Perry street, and shall

possess and exercise all the powers now conferred by law upon the present board of education of said city. The said board of public instruction shall have power, and it shall be their duty, to fix and determine the different grades of study which shall be taught in the various departments of the several schools under their charge, and to change the same from time to time as they shall deem best to advance the interest of the schools; and also to adopt such rules and regulations for the administration and government of the schools and for the admission of pupils to the various departments therein as they shall determine, with authority at any time to alter and amend the same.

§ 8. The said board of instruction shall have power to examine all applicants for the appointment by them as teachers in any of the schools under their charge; and no person shall be appointed and employed as a teacher in either of said schools (except in cases of emergency, when a teacher may be temporarily employed) unless the board shall, after such examination, consider him or her well qualified to discharge the duties of the office, and shall give to him or her a certificate to that effect, which certificate shall be signed on behalf of the board by the president and secretary thereof.

§ 9. For the purpose of carrying out the provision of the last preceding section of this act, the board may appoint a committee from their body at any time, to examine applicants for appointment as teachers, and the result of such examination shall be reported by the committee to the board for final action.

§ 10. The said board shall have power at all times to fix the term for which any teacher shall be appointed; to determine the kind of class books which are to be used in the several schools; the books thus adopted shall be uniform throughout all the schools as near as may be, and they may at any time adopt other books in the place thereof; to supply the requisite class books and stationery for the use of indigent pupils; to provide the several schools under their charge with the necessary school apparatus, maps and music books, the expense thereof to be defrayed out of the school moneys of the city; and generally to possess all the powers, to discharge all the duties and be subject to all the obligations heretofore conferred and imposed upon the several school officers of the city by the several laws now in force, relative to the public schools of said city.

§ 11. Seven members of said board shall be necessary to constitute a quorum for the transaction of business, and a majority of the members present at any meeting shall be sufficient to carry any measure, or to decide any question before their body for their action, except as is otherwise provided in the fifth and sixth sections of this act, and in cases of appointment or dismissal of any teacher or officer of the board, when it shall require, in each case, the affirmative vote of at least seven members thereof.

§ 12. The tuition of the pupils of the several schools under the charge of the board shall be free to all persons who are residents of said city and entitled to attend the same.

§ 13. The chamberlain of the city of Albany shall continue, as heretofore, to hold and receive all the school moneys of the city which now are or may hereafter come into his hands, and shall pay out the same on the orders of the board having the schools in charge for the time being; and on the first day of June next he shall open an account in the books of his office with the said board of public instruction, and shall then transfer to said account all balances which may exist in the account kept by him, between the city of Albany and the present board of education, on the first day of June next aforesaid. All orders of the said board on the chamberlain for the payment of money, shall specify the object for which the payment is to be made, and shall be signed by the president and countersigned by the secretary thereof.

§ 14. All the office furniture, text books, stationery and school apparatus, as well as all other school property of the city which may be in the possession and under the control and management of the present board of education on the first day of June next, shall, on and after that day, be regarded as in the possession, control and management of the said board of public instruction.

§ 15. \* The said board of public instruction shall report to the common council of the city, annually, and oftener if required by that body, the general condition of the schools under their charge, and shall also, on or before the first day of November in each year, certify to the said common council, by a majority of their whole number, the amount of money which will be required for school purposes the ensuing year, in addition to the public money, specifying the several purposes for which the same will be required and the amount for each; and the board of supervisors of the county of Albany shall, upon the requisition of the common council of said city, levy and collect the said amount upon the taxable property of said city, in the same manner as other taxes are levied and collected therein.

§ 16. No member of said board of public instruction shall receive any pecuniary compensation for his services as such member; nor shall any member thereof be directly or indirectly interested in any contract entered into by the board, nor shall he be paid for any work done, nor for materials or supplies of any kind furnished for the use of the schools or of the board; and any member who shall violate either of the provisions in this section contained, shall forfeit a penal sum equal to three times the amount received by such member, to be recovered with costs of suit, to be brought in the name of the chamberlain of the city of Albany, whose duty it shall be to prosecute the action for its recovery without delay, in any court having jurisdiction in the premises, and the amount recovered by him in such suit, after paying the necessary expenses of the prosecution and collection thereof, shall be for the benefit of the public schools of said city, and the same shall be credited by him to the said board of public instruction in their account with the city on the books of his office.

§ 17. If any person, being at the time a member of the said board of public instruction, shall accept the office of either mayor, recorder or alderman of said city, his office as such

\*This section substantially repeals section 7, of chapter 516, Laws of 1855.

member shall thereupon become vacant; the vacancy thus created shall be filled by appointment and election, in the manner provided in the sixth section of this act.

§ 18. The fourth and fifth sections of chapter one hundred and twenty-eight, of the Laws of eighteen hundred and forty-four, and the second, third, fifth and sixth sections of chapter five hundred and sixteen, of the Laws of eighteen hundred and fifty-five, together with all other acts and parts of acts relating to the district or public schools of the city of Albany, inconsistent with this act, are hereby repealed, except the act entitled "An act in relation to common schools in the city of Albany, west of Perry street," passed July eighteenth, eighteen hundred and fifty-three, which act is hereby continued in its original force and effect.

§ 19. Nothing in this act contained shall be so construed as to prohibit the board from causing vocal music to be taught in the schools, under the charge of one or more competent instructors to be appointed by the board for that purpose.

## AUBURN.

[Laws of 1850, chap. 349, as subsequently amended.]

SECTION 1. Title eight of an act to incorporate the city of Auburn, passed March 21, 1843, is hereby repealed.

§ 2. The offices of the several trustees, clerks, collectors and librarians of school districts in the city of Auburn shall cease on the third Tuesday in April, one thousand eight hundred and fifty, in like manner as if the same had expired by lapse of time. The inhabitants of said city, qualified to vote at school district meetings, shall assemble in their respective school districts on the day last mentioned, at the school-house in such district, and choose one trustee and a clerk of the district, who shall hold their respective offices until the next annual district meeting in the district for which they shall be respectively chosen, and until their successors shall have been severally chosen. Such annual district meeting shall hereafter be holden in the several districts in said city, on the second Monday in March, in each year; and from and after the passage of this act only one trustee shall be chosen annually in any school district in said city.

§ 3. The trustee elected in any district in said city shall have the power, and it shall be his duty, to call special meetings of the inhabitants of such districts, liable to pay taxes, whenever he shall deem it necessary or proper; to give notice of special, annual, and adjourned meetings, in the manner prescribed in this act, if there be no clerk of the district, or he be absent or incapable of acting, or shall refuse or neglect to give such notice; to visit the schools kept in the district as often as once in each quarter, and to report the condition of the same, with such suggestions for the improvement thereof as he may deem proper, to the board of education hereinafter named, and to perform such other duties as may be from time to time imposed upon him by the said board of education.

§ 4. It shall be sufficient notice of an annual, special, adjourned or first district meeting to affix such notice on the outer door of the district school-house, if there be any, and to post a copy of the same in three other public places in such district; the affixing and posting of such notice to be done at least ten days before such meeting, and no other notice of such meeting need be given.

§ 5. It shall be the duty of the clerk of each school district to record the proceedings of his district in a book to be provided for that purpose by the said board of education; to give notice, in the manner provided in the last preceding section, of the time and place of every annual district meeting or special district meetings, when ordered by the trustees of the district, and of any adjourned district meeting, when the same shall be adjourned for a longer period than one month; to keep and preserve all records, books and papers belonging to his office, and to deliver the same to his successor in office.

§ 6. Any vacancy in the office of district clerk may be supplied by the trustee of the district in which such vacancy shall happen; but the person appointed to supply such vacancy shall hold the office only for the unexpired term.

§ 7. [Repealed by chapter 176, Laws of 1866.]

§ 8. The common council of said city shall, at the last regular meeting thereof next preceding the third Tuesday of April, one thousand eight hundred and fifty, appoint one school commissioner in each of the wards of said city, who shall be residents of the wards for which they are respectively appointed; immediately upon the appointment of such school commissioners, the city clerk shall, in the presence of the common council, divide them by lot into four classes, to be numbered one, two, three, four. The term of office of the first class shall expire on the first Monday succeeding the first Tuesday in April, 1851; the second class in one year thereafter; the third in two years, and the fourth in three years, and one commissioner only shall thereafter be annually appointed, who shall be appointed at the annual meeting of the common council, held on Monday next succeeding the annual election, and who shall be a resident of the same ward with the school commissioner whose term of office shall then expire, who shall hold his office for four years, and until a successor shall be duly appointed. In case of a vacancy in the office of either of the commissioners, the common council shall appoint a successor, who shall be a resident of the ward in which such vacancy shall occur, for the unexpired term.

§ 9. The trustees of the several school districts so elected, and the school commissioners so appointed, together with the mayor of said city, shall constitute and are hereby designated the board of education for the city of Auburn. They shall meet on the first Tuesday of each and every month, and as much oftener as they shall from time to time appoint. A

majority of the said board shall constitute a quorum for the transaction of business. The mayor shall be president of such board, and shall have power to call special meetings thereof in the manner provided by law for calling special meetings of the common council. In the absence of the mayor, the said board shall appoint some other member to preside at such meetings and perform the duties of the president. The said board shall appoint a secretary, who shall hold his office during the pleasure of the board, and whose compensation shall be fixed by the board and paid out of the moneys in this act specified as the common school fund; the said secretary shall be the clerk of the board of education, and shall keep a record of the proceedings of the board and perform such other duties as the board may prescribe. *[As amended by chapter 176, Laws of 1866.]*

§ 10. *[Repealed by chapter 176, Laws of 1866.]*

§ 11. The said board of education shall possess all the powers conferred by law upon town superintendents of common schools, as to the formation and alteration of school districts within said city, except that in arranging such districts no territory without the limits of said city shall be included, nor shall any territory within said city belong to or be taxed in any school district of any adjoining town; and shall possess all the powers and be subject to all the duties and responsibilities of trustees of common schools in towns, as to the several common or district schools within said city, so far as the same are applicable, except as otherwise in this act provided; and shall have the custody of all the property, real and personal, belonging to or owned by the several school districts, and shall pay the compensation of the teachers of the said schools, and all other necessary and contingent expenses incurred in the support thereof; and shall appoint librarians to take charge of the several district libraries, who shall be subject to the control and hold their offices during the pleasure of such board; and shall have the power, and it shall be their duty, to pass such by-laws and ordinances for the regulation, government, control and management of the common schools in said city, and of the teachers and pupils of such schools, and of the officers of the several school districts in said city, and for the safe keeping, disposition and management of the libraries, maps and apparatus appertaining to such schools, and to regulate the text books used in such schools, as they shall deem expedient; and said board may prescribe a penalty for a violation of any ordinance or by-law, authorized by this act, not exceeding ten dollars, and any such penalty may be sued for and recovered, with costs, in the name of the mayor and common council of the city of Auburn; and the said board may subject the parent or guardian of any minor, and the master or mistress of any apprentice or servant, to any such penalty for a violation of any such ordinance or by-law by any such minor, apprentice or servant.

The said board shall have the power to establish, organize and maintain a classical department, or school, under their charge, in the city of Auburn, and purchase a site and erect a building therefor in their discretion, and said classical department, or school, shall be known as "The Auburn academic high school;" and the said board of education of the city of Auburn, and their successors in office, are hereby constituted a body corporate for that purpose under that name, and which department or school shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies, and to share in the distribution of the moneys of the literature fund of this State as the academies thereof. The said board shall have the power, with the consent of two-thirds of the trustees of the Auburn academy, to use and occupy the said Auburn academy property for the purposes of said academic high school; and with the consent of two-thirds of the trustees of said academy, they may take a transfer of said property known as the Auburn academy property to the said Auburn academic high school; and thereafter the same shall be used and occupied as an academic high school, pursuant to the provisions of this act. And tuition in the said academic high school shall be forever without charge to all children residing in the city of Auburn. The said board shall have the power to consolidate the several district libraries in said city into one library, and locate the same in some room, or rooms, of one of the school-houses of the city, or, in their discretion, they may build an addition to one of the school-houses, or the academic high school, for the purpose of said library, or they may lease a room or building for the same purpose. *[As amended by chapter 176, Laws of 1866.]*

§ 12. All penalties collected by virtue of this act shall be paid to the city treasurer, and by him deposited to the credit of the common school fund.

§ 13. The clerk of the board of education shall keep a record of all by-laws and ordinances which shall be passed by said board, and the same shall be published and take effect, and be proven and read in evidence, in like manner as ordinances passed by the common council of the city of Auburn; a record or entry made by the said clerk at the time of the first publication of any ordinance, or a copy thereof duly certified by him, or the affidavit of the printer or publisher, shall be presumptive evidence of the publication thereof, in all courts and places.

§ 14. Whenever the board of education shall, by resolution, determine to build a school-house, it shall be the duty of the said board of education to fix the site of the said school-house, and determine the sum necessary to be raised for the purchase of such site and the building of said school-house, and report the same to the common council, which sum shall in no case exceed the sum of eight thousand dollars. *[As amended by chapter 176, Laws of 1866.]*

§ 15. It shall be the duty of the common council to levy and raise upon the city the sum so reported, pursuant to the last section, in the same manner and at the same time as the general taxes of the city are levied or raised, and when the same shall be collected it shall be paid to the city treasurer and deposited to the credit of the board of education; and no part thereof shall be appropriated by said board otherwise than for the purchase and

improvement of such site and the erection of such school-house, with the appurtenances. *[As amended by chapter 176, Laws of 1866.]*

§ 16. The said board of education shall annually, on or before the first day of August, fix and determine, and certify and report to the common council, the amount of money which, when added to the money annually apportioned to the city of Auburn, or to the several school districts comprised therein out of the funds belonging to the State, shall be necessary to defray the expenses of all the common or district schools and the academic high school in said city, for the ensuing year, for fuel, furniture, school apparatus, repairs and insurance of school-house, teachers' wages and contingent expenses, and also to defray the expenses of a school for colored children, as hereinafter provided, and to pay the compensation of the secretary of the board of education and the contingent expenses of such board. The amount so certified shall in no case exceed six times the amount which shall have been apportioned out of the funds belonging to the state, as aforesaid, for the year next preceding. *[As amended by chapter 176, Laws of 1866.]*

§ 17. The common council of the said city shall annually levy and raise the amount of money so certified and reported by the board of education, and the said amount so to be raised shall be levied and collected at the same time and in the same manner as the other general taxes of the said city are levied and raised, and in addition thereto; but the warrant issued to the collector for the collection of such taxes shall specify what amount of such taxes shall be paid to the treasurer for general city purposes, and what part as a fund for the support of schools.

§ 18. All moneys levied and raised for the support of common schools, together with the public money received from the State, shall be paid to the treasurer of the city of Auburn, and shall by him be kept separate and distinct from the other moneys of said city, and shall be known and distinguished as the common school fund, and shall be paid out by the treasurer only upon an order drawn upon him, and signed by the president and countersigned by the clerk of said board of education; and no such order shall be drawn except by virtue of a resolution of the board. Such order shall specify for what purpose the amount specified therein is to be paid; and the clerk of such board shall keep an accurate account, under the appropriate heads of expenditure, of all orders drawn on the treasury, in a check book, to be kept by him for that purpose.

§ 19. The board of supervisors of Cayuga county shall not have power to levy any tax upon the city of Auburn for the support or on account of common schools.

§ 20. The said board of education shall exclusively audit all accounts and claims against any school district, or which have accrued on account of any district school in said city; and the payment of the same, or of such parts thereof as shall be allowed by the said board, shall be made directly to such claimants by the city treasurer out of the moneys belonging to the common school fund, upon the order of said board, as hereinbefore provided; but the aggregate of the expenditures and contracts of the said board, during any year, shall not exceed the amount of moneys which shall be subject to their order during the then current year.

§ 21. *[Repealed by chapter 176, Laws of 1866.]*

§ 22. The said board of education shall have power to establish and cause to be kept in said city a school for the instruction of colored children, as they shall deem expedient, and the said board shall have and exercise all the powers, in relation to such school, of trustees of school districts in towns, as far as applicable.

§ 23. Whenever the said board of education shall determine to establish a school for the instruction of colored children, they shall make an estimate of the expense of erecting a suitable school-house therefor, and determine the site thereof, and report such proceedings to the common council.

§ 24. The common council shall have power to raise by general tax in the manner hereinbefore provided, and on a separate warrant, or in addition to the general city tax, such sum as shall be necessary to purchase such site and build such school-house, not exceeding three thousand dollars; or the said common council may refuse to raise such tax. In case the common council shall refuse to raise such tax, the said board of education shall have power to provide and lease a suitable room or building for the accommodation of such school, but the annual expenditure for this purpose shall not exceed the sum of one hundred dollars, the same to be paid from the common school fund. *[As amended by chapter 176, Laws of 1866.]*

§ 25. All teachers of common schools in said city shall be employed by the trustees of the district for which such teacher or teachers shall be employed in conjunction with such other member of the board, or other person, as the board may designate, and all teachers in the academic high school shall be employed by the board of education; but no appointment or employment of any such teacher shall be valid beyond the first regular meeting of the board of education thereafter, unless such appointment shall be approved by such board; and all contracts made with teachers by said trustee and such other member of the board or other person shall be subject to the provisions of this act; and such contract shall cease to be binding on the rejection of such teacher by the board of education. *[As amended by chapter 176, Laws of 1866.]*

§ 26. The said board of education may remove any teacher for cause, to be specified in the minutes of the proceedings of the said board; and in case of any such removal, any contract with any such teacher shall cease, and another teacher shall be employed in the manner provided in the last preceding section.

§ 27. To the first annual estimate of school expenses, presented by the board of education to the common council, the said board shall add the present indebtedness of every school district within said city for any of the causes specified in section (16) sixteen of this act, or which may necessarily accrue therefor previous to the time of presentation of such first estimate; and such additional amount shall be raised in like manner as the other moneys

stated in said estimate, and shall be paid into and compose a part of the common school fund, and the said board shall assume and pay such indebtedness out of the moneys so received.

§ 28. The said board of education shall annually publish, in some newspaper in said city, a statement of the number of common schools in said city and the number of pupils instructed therein, the total amount of moneys received for school purposes, with the sources thereof, and the expenditures on account of each school, specifying as near as may be the items of such expenditures.

§ 29. An appeal may be taken to the State Superintendent of Common Schools from any proceeding of the said board of education in the formation or alteration of any school district, in the same manner and for the same causes as appeals may be taken from the proceedings of town superintendents of common schools.

§ 30. All titles to real estate to be used for school purposes, with the exception of a site for a school-house for colored children, shall be taken in the name of the trustee of the district in which such real estate shall be situated, in his official name; and any real estate now or hereafter owned by any school district may be sold by the trustees of such district, upon a vote of the inhabitants of said district, and with the approval of the said board of education; and the avails of such real estate shall be paid to the city treasurer, and be by him placed to the credit of the board of education, and by said board appropriated exclusively to the benefit of such district.

§ 31. The treasurer and collector of the city of Auburn shall respectively, with their sureties, be liable on their official bonds for any default, delinquency, neglect or misconduct in the duties with which they may be respectively charged, under and by virtue of this act, in the same manner and with the like effect as for any other official default, delinquency, neglect or misconduct.

§ 32. All acts and parts of acts inconsistent with this act are hereby repealed.

§ 33. The said board of education shall have power to allow the children of persons not resident within the city, to attend any of the schools of said city under the care and control of said board, upon such terms as said board shall by resolution prescribe, fixing the tuition which shall be paid therefor. [Added by chapter 176, Laws of 1866.]

§ 34. (§ 6 of 1866.) The office of city superintendent of common schools is hereby abolished. [Chapter 176, Laws of 1866.]

#### CAYUGA ASYLUM.

Section 12, chapter 207, Laws of 1852, page 279, being "An act to incorporate the Cayuga Asylum for destitute children," in the city of Auburn, provides as follows:

§ 12. The said society shall be annually entitled to such distributive share of the school moneys raised in this State, and also in the city of Auburn, in the same manner and to the same extent as is now or shall be provided in respect to the common schools of said city; and the school of said society shall for all purposes be considered a separate and additional district school in said city, and shall be subject to the general supervision of the board of education of said city, though remaining and being at all times under the immediate direction and management of the said society.

#### BINGHAMTON.

*Chap. 322, Laws of 1861, p. 752, as amended by chap. 361, Laws of 1864, p. 843; by chap. 580 Laws of 1866, p. 1250, vol. 2, and by chap. 291, title 11, Laws of 1867, p. 588, vol. 1.*

[Chap. 291, Laws of 1867, p. 588.]

#### TITLE XI.—BOARD OF EDUCATION.

§ 1. The act entitled "An act in relation to schools in the village of Binghamton," passed April nineteenth, one thousand eight hundred and sixty-one, and the several acts amendatory thereof, are hereby amended by striking out the word "village" wherever the same appears in said acts and in the titles thereof, and inserting the word "city" in place thereof; and also by striking out the words "trustees and board of trustees" of the village, wherever the same appears in said acts, and inserting the words "common council;" and also by striking out the word "president" in the sixth section of said act, and inserting the word "mayor;" and also by striking out the words "board of trustees" and "or any collector," in section nineteen of said act, and also by striking out the word "collector," in sections thirteen and twenty-two of said act, and inserting the words "tax receiver;" and also by altering section two of said act so that each ward shall be a commissioner district, and that the numbers of such districts shall correspond with the numbers of the wards. Said acts as so amended shall constitute the eleventh title of this act, and all the provisions thereof shall apply to and be in force in said city as the same has heretofore applied to and been in force in the village of Binghamton, and the school commissioners elected under said act and the acts amendatory thereof shall be school commissioners for said city, and all the duties devolved by said act and the acts amendatory thereof upon the officers of the village of Binghamton shall be performed by the corresponding officers of the city of Binghamton.

§ 1. The several wards in the city of Binghamton shall, for the purposes hereinafter mentioned, form one school district, to be called the union school district of the said city of Binghamton.



§ 2. The said union school district shall be divided into five subdivisions, to be called commissioner districts, each commissioner district to remain and continue separate and distinct for the purposes and to the extent in this act specified. The said commissioner districts shall be numbered as follows: The first ward of said city shall be known as commissioner district number one; the second and third wards of said city shall also be known as commissioner district number two; the fourth ward of said city shall also be known as commissioner district number three; the fifth ward of said city shall be known as commissioner district number four, and the sixth ward of said city shall be known as commissioner district number five. Said districts shall not be subject to alteration except by the Legislature, or by a resolution of the board of education hereinafter created.

§ 3. Daniel S. Dickinson, residing in commissioner district number one; Horace S. Griswold, residing in commissioner district number two; Hallam E. Pratt, residing in commissioner district number three; Joel S. Fuller, residing in commissioner district number four; and William S. Beard, residing in commissioner district number five, are hereby appointed commissioners in behalf of such districts respectively. The common council of the city of Binghamton shall, within fifteen days after the passage of this act, appoint four persons to act as school commissioners in behalf of said union school district, who shall be residents thereof; and the said persons above named, and the persons appointed by the common council of the said city as commissioners, and their successors to be chosen as hereinafter provided, are hereby constituted a corporate body in relation to all the powers and duties conferred and imposed by law, to be styled "the board of education of the city of Binghamton," and are hereby invested with all the powers and charged with all the duties conferred upon them by this act. A majority of the commissioners shall constitute a quorum.

[Sections 4, 5 and 6, of chap. 322, Laws of 1861, repealed by section 1, of chap. 361, Laws of 1864, p. 843.]

§ 2. The terms of office of all the commissioners appointed by the common council of said city, under and by virtue of said act, shall expire on the first day of October next; and on the third Tuesday of September next there shall be elected, in the same manner that trustees of school districts are now elected by each commissioner district now named in said act, one commissioner, who shall be a resident of the district from which he is elected, and the commissioners so elected shall enter upon the duties of their said offices on the first day of October next, and their terms of office shall continue until the first day of October, eighteen hundred and sixty-six. The commissioners who have been elected in the said district shall hold their offices until the first day of October, eighteen hundred and sixty-five; and on the third Tuesday of September, eighteen hundred and sixty-five, their successors shall be elected by said districts respectively as trustees of school districts are now elected; and on the third Tuesday of September in each year thereafter there shall be elected by each of said districts, in manner aforesaid, one commissioner, who shall be a resident of the district from which he is elected, and such commissioners shall enter upon their terms of office on the first day of October succeeding their election, and shall continue therein for the term of two years, and until their successors shall have been elected and qualified. [As amended by section 2, chapter 361, Laws of 1863, p. 843.]

§ 3. The commissioners elected by virtue of this act shall, before entering upon the duties of their offices, take and file with the clerk of said city the oath of office prescribed by the Constitution of this State, and they shall be members of the board of education of said city. All vacancies in the said board of education which may occur from any other cause than the expiration of their term of office shall be filled by said board, and the commissioners so appointed shall hold their offices for the unexpired terms of those whose places they are appointed to fill. [As amended by section 3, chapter 361, Laws of 1864, p. 843.]

§ 7. Any member of the board of education may, for neglect of duty, or either immoral or official misconduct, be removed from office by the common council of the city, by a vote of two-thirds present at any regularly called meeting thereof; but, before final action thereon, a written copy of the charges preferred against said member shall be served upon him, and he shall be allowed an opportunity to explain or refute them.

§ 8. At the first meeting of the board of education, and at each annual meeting thereafter, they shall elect one of their number president of the board, and whenever he shall be absent or unable to act they shall appoint a president pro tempore. At their first meeting the board shall fix the time for their next annual meeting, and unless changed by a resolution of the board, the time thus fixed shall be the time for future annual meetings. The board of education shall receive no compensation for their services.

§ 9. The board of education shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by any member of the board, as often as necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his place of residence, with some person of suitable age and discretion, at least forty-eight hours before the hour for such special meeting.

§ 10. The board of education shall appoint a secretary and librarian, who shall hold their offices during the pleasure of the board, and whose compensation shall be fixed by the said board; and the same person may hold the office of secretary and librarian. The secretary shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The librarian shall have charge of the library or libraries of the district, and may appoint such assistants as may be necessary, from time to time, and such assistants may be removed at any time by the board of education.

§ 11. The record of the board of education, or a transcript thereof, certified by the secretary, shall be received in all courts as *prima facie* evidence of the facts therein set forth; and such record, the books, accounts, vouchers, and papers of the said board, shall at all times be subject to the inspection of the common council of the city, or of any committee thereof.

§ 12. The common council of the city of Binghamton shall have power, and it shall be their duty, to raise from time to time, by tax to be levied upon all the real and personal estate in said union school district which shall be liable to taxation for town and county charges, such sums as may be determined upon, and certified by the board of education to be necessary and proper, for any or all the following purposes, for the current year:

1. To purchase, lease, or improve sites for school-houses.

2. To build, purchase, lease, alter, and repair school-houses, out-houses, and appurtenances thereunto belonging.

3. To purchase, exchange, improve and repair school apparatus; but the power herein granted shall not be deemed to authorize the furnishing with class or text-books any scholar whose parents or guardians shall be able to furnish the same.

4. To procure fuel and defray the necessary expenses of keeping the school-houses in order, exclusive of repairs, including insurance.

5. To defray the contingent expenses of the common schools, and the district library or libraries, including salary of librarian and superintendent.

6. To defray the contingent expenses of the board of education, including the salary of the secretary thereof.

7. To pay teachers' wages, after the application of the public money appropriated by law for that purpose.

8. To pay charges or expenses incurred by law, or necessary to carry this act into effect, or to refund loans contracted by law, and to pay the interest thereon, or to pay such sums as shall be required to fulfill any contract duly made under the provisions of this act.

§ 13. The tax to be levied as aforesaid and collected by virtue of this act shall be levied and collected in the same manner and at the same time and by the same officers that other city taxes are, and the powers, duties and liabilities of the tax receiver and his sureties shall be the same in reference to the collection of this tax as for other city taxes, and his jurisdiction shall extend under this act to all the territory embraced in said union school district.

§ 14. The amount raised for teachers' wages and contingent expenses shall not be less than two nor more than six times the amount appropriated to said union district or the several districts composing the same, from all the common school funds of the State during the previous year; nor shall the amount to be raised in any one year for the purchase of sites, erecting and repairing school-houses and the appurtenances, exceed two thousand dollars, except as herein otherwise provided for. [*As amended by chapter 580, Laws of 1866.*]

§ 15. All moneys raised pursuant to the provisions of this act, and all school moneys by law appropriated to or provided for said union school district, shall be paid to the treasurer of said city, who, together with the sureties upon his official bond, shall be accountable therefor, in the same manner as for other funds of said city, and the board of trustees, in fixing the amount of the treasurer's sureties, shall include the moneys received by virtue of this act. The said treasurer shall be liable to the same penalties for official misconduct in relation to said money as for any similar misconduct in relation to other moneys of said city.

§ 16. All moneys raised by virtue of this act, or received from any other source, for the use of common, academic or high schools, in buildings therefor, shall be deposited with the treasurer for the safe-keeping thereof, to the credit of the "board of education," until drawn as hereinafter provided for, and the said treasurer shall keep the account of the funds thus deposited with him separate and distinct from any other funds which he is or may be authorized to receive.

§ 17. The said treasurer of the city of Binghamton shall, at the proper time in each year, draw upon the county treasurer or other proper officer for all moneys appropriated to said union district from the common school, literature, or other funds of this State; and he is hereby authorized to receive the same for the said union district, as provided for in the preceding section.

§ 18. The treasurer shall pay out the moneys received by him by virtue of this act, only upon drafts drawn by the president and countersigned by the secretary of the board of education, which drafts shall not be drawn except in pursuance of a resolution or resolutions of said board, and shall be made payable to the person or persons entitled to receive the amount thereon, and shall state on what account said draft is drawn.

§ 19. The board of education may cause a suit or suits to be prosecuted in the name of the city of Binghamton upon the official bond of the treasurer of said city for any default, delinquency, or official misconduct in relation to the collection, safe-keeping, and payment of any money in this act mentioned.

§ 20. The said board of education shall have power, and it shall be their duty:

1. To organize, establish and maintain such and so many schools in said "union school district," including the common schools now existing therein, and including also any academy or high school, as they shall deem requisite and expedient, and to alter and discontinue the same.

2. To purchase and hire school-houses and rooms, lots, or sites for school-houses, and to fence and improve them.

3. Upon such lots and sites owned by said city to build, enlarge, alter, improve and repair school-houses, out-houses and appurtenances as they may deem advisable.

4. To purchase, exchange, improve and repair school apparatus, books for indigent pupils, furniture and appendages, and to provide fuel for the schools, pay the necessary insurance on buildings and school property, and to defray the contingent expenses of the school library.

5. To have the custody and safe-keeping of the school-houses, and all school property belonging to said union district, and to see that the ordinances of the common council in relation thereto be observed.

6. To contract with, examine, license and employ all teachers in said schools, and at their pleasure remove them.

7. To pay the wages of such teachers out of the money appropriated and provided by law for the support of common schools in said union district, or by this act.

8. To defray the necessary contingent expenses of the board, including the annual salary of the secretary of the board, provided the account of the contingent expenses of said board shall first be audited and allowed by the common council.

9. To have in all respects the superintendence, supervision and management of the common schools of said district, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, or the reception of pupils, and their transfer from one class to another, or from one school to another, and generally for their good order, prosperity and utility.

10. Whenever, in the opinion of the board of education, it may be advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the corporation, to report the same to the common council.

11. To prepare and report to the common council such ordinances and regulations as may be necessary and proper for the protection, safe-keeping, care and preservation of school-houses, lots and all property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations; and annually, on or before the first day of June, to determine and certify to the common council the sums, in their opinion, necessary or proper to be raised, under the eleventh section of this act, for the year commencing on the first day of October thereafter, specifying the amount required for each of the purposes therein mentioned, and the reason therefor.

§ 21. Upon the reception of the report of the board of education by the common council in relation to the amount of money necessary for school purposes, as directed to be made in the preceding section, the common council shall proceed to consider the same, and approve, increase or diminish any or all of said estimates; but they shall not diminish the aggregate amount so that the sum to be raised by the said union district shall be less than twice, nor increase the same so that it shall exceed six times, the amount received during the preceding year from the State for school purposes; and after having fixed the amount to be expended for each and all the purposes mentioned in the last preceding section, the same shall be certified to the board of education, who shall, during such fiscal year, limit the expenditures for such purpose, so that the same shall not exceed the appropriation, and not lessen the length of time each school shall be kept in each district. [*As amended by chapter 580, Laws of 1866, p. 1250, vol. 2.*]

§ 22. Between the first and fifteenth days of October of each year, the board of education shall make and transmit to the school commissioner of the western district of Broome county, a report, in writing, bearing date the first of October, in the year of its transmission, and signed by the president and secretary of the board of education, and stating:

1. The number of school-houses in said union district, and an account and description of all common schools kept therein, during the preceding year, and the length of time they have severally been taught.

2. The number of children taught in said schools respectively, and the number between the ages of four and twenty-one years, residing in said district on the first day of October in each year.

3. The whole amount of school moneys received by the treasurer of said city, during the preceding year, distinguishing the amount received from county treasurer, from the city tax receiver, and from other sources, specifying the same.

4. The manner in which said moneys have been expended, and whether any and what part remains unexpended, and for what cause.

5. The amount of money received for tuition from foreign pupils or any other during the year, and the amount paid for teachers' wages, in addition to the public moneys, with such other information relating to the common schools of said district as may, from time to time, be required by the State Superintendent of Public Instruction.

§ 23. Whenever, in the opinion of the board of education, it shall become advisable to establish a high school or academy in connection with the school system by this act contemplated, and erect a suitable building therefor, they shall report that fact, together with an estimate of its entire cost, with the site, to the common council. The said common council, upon the receipt of such report and estimate, shall cause the question of raising the proposed amount by tax to be submitted to the decision of the tax payers of the union school district in such a manner as they shall deem best calculated to procure a fair expression from said tax payers. All further proceedings in relation to this special school tax by the said board of trustees shall be as directed and set forth in title eleven of the city charter, so far as the same will apply to this act, except that if the tax is voted, the restriction therein stated is hereby removed, and the time of payment and amount are left optional with the trustees. The provisions of this section shall extend to all amounts required for

building school-houses where the estimated cost exceeds two thousand dollars. [*As amended by chapter 580, Laws of 1866.*]

§ 24. The trustees of the Binghamton academy are hereby authorized and empowered to transfer to the board of education hereby created, either immediately or at a future time, on such conditions as they jointly shall deem most conducive to the cause of education, the right, title and interest in and to all the estate, real and personal, and all bequests belonging to said academy, to be by them used in the purchase of a site, the erection of an academic or high school, or for the maintenance of an academy in connection with the general free school system contemplated in this act. The board of education, if they shall deem it necessary, may, with the advice and consent of the common council, organize and maintain primary, secondary, or high schools, or either of them in, or cause them to be taught in connection with, the Binghamton academy, on such terms and conditions, and for such time as shall be deemed expedient, by and between said board of education and the trustees of such academy.

§ 25. The academy connected with the school system contemplated by this act, when organized, and when it has complied with the necessary requirements, shall be recognized as one of the academies of this State, subject to the visitation of the Regents, and shall be entitled to participate in the distribution of the income of literature and other funds in the same manner and upon the same conditions as the other academies of the State; and the Regents of the University of New York shall pay annually to the board of education of Binghamton the distributive share of the said funds to which the said academy shall be entitled.

§ 26. The board of education shall report annually the condition of the union school district of Binghamton to the school commissioner of the western district of Broome county, in the same manner and to the same extent as other school districts are by law required to report. The said commissioners, in making apportionment of school money, shall designate the amount due said union district for teachers' wages and library to the treasurer of Broome county, who shall, upon the draft of the president of the board of education, countersigned by the secretary thereof, pay the sum thus certified as due said union district, to the treasurer of the city of Binghamton.

§ 27. Each member of the board of education shall visit all the schools in said union school district at least once in each year of his official term, and the said board of education shall provide that each of said schools shall be visited by a committee of their number, at least once in each term, who shall report in writing, to said board, the condition of each school, and make such suggestions as they may deem proper.

§ 28. The schools organized under this act shall be free to all pupils between the ages of four and twenty-one years, who are actual residents of said union school district. The board of education shall decide all questions of residence arising under this section. The said board may allow the children of non-residents to attend the schools of said district, and shall prescribe the rates for the tuition of such non-residents, and also for all pupils over twenty-one years of age, payable always in advance.

§ 29. The said board of education shall be trustees of the school district library of said union district, and all the provisions of law which are now in force, or hereafter may be passed, relative to school district libraries, shall apply to said board of education in the same manner as if they were trustees of a school district. They shall be vested with the same discretion as to the disposition of moneys, appropriated by the laws of this State, for the purchase of libraries, which is therein conferred on the inhabitants of school districts, and they shall have power to purchase, exchange, repair or dispose of any books or other property of said library, or cause it to be done, and apply the proceeds to the purchase of other books and apparatus; also to provide suitable rooms and furniture for said library; and further, they may appropriate for the benefit of said library, out of the moneys annually raised in said city by the school tax, an amount not exceeding one hundred dollars, in addition to the library money received from the State.

§ 30. The title to the school-houses, sites, furniture, books, and all other school property, belonging to the districts, in this act mentioned, shall be vested in the city of Binghamton, and the same, while used or appropriated for school purposes, shall not be levied on or sold by virtue of any warrant or execution or other process, nor be subject to taxation for any purpose whatever; and the said city, in its corporate capacity, shall be competent to take, hold and dispose of any real or personal estate transferred to it by grant, gift, bequest or devise, for the use of the common schools or academy of said union school district, whether the same be transferred in terms to said city by its proper style, or by any other designation, or to any person or persons, or corporation, for the use of said schools and academies.

§ 31. The common council may, upon the recommendation of the board of education, sell any of the property, including existing sites held by them by virtue of this act, upon such terms as they shall deem most advantageous; and the proceeds of all sales shall be paid to the treasurer of the city, and shall be by said board of education expended in the purchase, repair or improvement of school-houses, sites or appurtenances, furniture or apparatus.

§ 32. It shall be the duty of said board of education, at least fifteen days previous to each annual election for commissioners, to prepare and report to the common council a true and correct statement of the receipts and disbursements under the provisions of this act, during the preceding year, in which account shall be stated, under appropriate heads:

1. The money raised by the common council under the twelfth section of this act.
2. The school moneys received by the treasurer of the city from the county treasurer.
3. The moneys received by the treasurer of the city under the eleventh section of this act.
4. All other moneys received by the said treasurer, subject to the order of the board of education, specifying the sources from which they have been derived.

5. The manner in which such sums of money shall have been expended, specifying the amount under each head of expenditure; and the common council shall, ten days before such election, cause the same to be published in one or more of the papers of said city.

§ 33. The common council shall have power, and it shall be their duty, to pass such ordinances and regulations as the board of education may report as necessary for the protection, preservation, safe keeping, and care of the school-houses, lots, libraries, and property belonging to or connected with the schools of said union district, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in the act to incorporate said city; and all such penalties, and all others by this act imposed, shall be collected in the same manner that the penalties for violations of the city ordinances are by law collected, and when collected shall be paid to the treasurer of the city, to the credit of the board of education, and it shall be subject to their order, in the same manner as other moneys raised pursuant to the provisions of this act.

§ 34. The various school district offices, in each of the districts herein embraced, shall terminate whenever this act shall take effect; and the board of education shall be chosen and organized, and shall enter upon the duties of their office, except as herein otherwise provided. The trustee and collector in each district shall retain the power now by law vested in such officers until they, by due diligence, shall have closed up all the unsettled business of their several districts, and discharged all the indebtedness thereof, and for such purpose shall, if necessary, call meetings of the inhabitants of such district, and when voted at a legally called meeting shall levy and collect a tax sufficient to liquidate such indebtedness.

§ 35. It shall be the duty of the clerk of the city immediately after the election or appointment of any person to any office mentioned in this act, personally, or in writing, to notify him of his election or appointment, and any person who, without sufficient cause, shall refuse to serve therein, shall forfeit the sum of ten dollars; and every person so elected or appointed, and not having refused to accept, who shall neglect to discharge the duties of such office, shall forfeit the sum of twenty dollars to said board of education. It shall be the duty of the said board of education forthwith to prosecute for all forfeitures and penalties under this act, when voluntary payment is refused; and, when received, to apply the same to the purposes of education in said district. All officers mentioned in this act shall be deemed public officers, within the intent and meaning of section thirty-eight, of title six, of chapter one, part four of Revised Statutes, and, as such, liable to the penalty therein prescribed, in addition to the penalty in this section before provided.

§ 36. The board of education shall cause a school, or schools, for colored children to be taught in said union district, and include the expenses thereof in the amount so to be raised annually by tax for contingent expenses and other purposes of education provided for in this act.

§ 37. The board of education may, when they shall deem it advisable, appoint a superintendent of common schools for the said union school district, who may, *ex officio*, be secretary of said board. He shall be under the direction of the board of education, and they shall prescribe his general duties. In addition to such other duties as may be devolved upon him by the board, in the visitation and superintendence of the schools, he shall examine the qualifications of teachers, and grant certificates in such manner and form as may be prescribed by the State Superintendent, which shall not be in force longer than a year, and which may at any time be revoked by the board of education. He shall be paid a salary out of the general fund, to be fixed by the board of education, and may be removed from office by the vote of a majority of all the members of the said board.

§ 38. All former or existing acts or parts of acts conflicting or inconsistent with the provisions of this act are repealed; but nothing in this act shall be construed to limit, restrain, or annul the powers of the Superintendent of Public Instruction. In all matters of dispute, which shall be referred to him by appeal, and which shall arise under and by virtue of this act, or under and by virtue of any act, which is now or shall hereafter be applicable to the schools, school officers, or school property of or in said city, his decision or order shall be final and binding.

#### BROOKLYN.

[*Laws of 1850, chap. 143, as subsequently amended.*]

Sections 1, 2 and 3 of chapter 22, Laws of eighteen hundred and sixty-two, p. 84, takes the place of section 1, of chapter 143, Laws of 1850.

SECTION 1. On and after the first Monday of February in the year one thousand eight hundred and sixty-two, and in each year thereafter, the mayor of the city of Brooklyn shall nominate, and, with the approval of a majority of all the members elected to the common council thereof, appoint, competent and suitable persons, residents of said city, to fill the vacancies in said board of education, occasioned by the expiration of the term of office of members of said board.

The term of office of such persons shall be three years; and in making such appointments, care shall be taken to procure the representation in said board of at least one member from each school district, as now or may be hereafter determined.

§ 2. In case the said mayor shall not so nominate, or the said common council shall not, on or before the first day of March in each year, approve such nominations, or any of them, or such others as the said mayor may make, then the members of said board of education whose term of office shall then have expired, and whose successors shall not have been appointed, as aforesaid, shall continue to hold their said offices until the first Monday of February then next ensuing, and until their successors are appointed.

§ 3. Hereafter all vacancies in said board, occasioned otherwise than by expiration of the term of office, shall be filled on the nomination of the mayor with the approval of the common council, as aforesaid.

§ 2. The board of education shall have the entire charge and direction of all the public schools of said city, and of the school moneys raised for the support of the same, and shall possess the powers and be subject to the general duties of trustees of common schools in this State, so far as the same are not impaired or affected by this act. It shall annually choose a presiding officer, make its own by-laws, keep a journal of its proceedings, define the duties of its officers and committees, and prescribe such rules and regulations, for instruction and discipline in said public schools, as are not inconsistent with the laws of the State; and all the provisions of the act relating to resignations and expulsions in the common council shall be applicable to the board of education.

§ 3. The whole city shall be a school district for all purposes of taxation, as well for the purchase of school sites and the building and repairing of school-houses as for the annual support of schools; but shall be divided by the board of education into as many districts as there are schools, for the purpose of determining the limits within which children may attend such schools.

§ 4. The board of education shall have power to organize and establish schools for colored children, and such evening schools as it may from time to time deem expedient, and shall adopt the necessary rules for the government of the same. It may make use of the public school-houses under its charge for such evening schools, and the expenses of such evening schools shall be paid out of the general fund, in the same manner as those of the other public schools. No person shall be prohibited from attending the evening schools on account of age.

§ 5. The board of education shall annually appoint a city superintendent of common schools, whose duty, in addition to the visitation and superintendence of the schools, shall be to examine the qualifications of teachers, and grant certificates in such manner and form as may be prescribed by the State Superintendent of Public Instruction; which shall not be in force longer than a year, and may at any time be revoked by the board of education. He shall also make such annual and other reports of the condition of the schools, as he may be required by law or by the said board, and perform such other duties as may be prescribed by the said board, in relation to the common schools of said city. The said board shall, also, annually appoint a secretary to said board, who shall perform such duties as may be prescribed by the said board. Such superintendent and secretary shall be paid salaries out of the general fund, to be fixed by the said board. They may be removed from office by a vote of a majority of all the members of the board of education. [As amended by chapter 112, Laws of 1857.]

§ 6. The treasurer of the city shall be, *ex officio*, the treasurer of the board of education, and shall receive, to the credit of said board, from the county treasurer, the amount of school money to which the city is entitled from the State appropriation, together with such amount as is raised by the board of supervisors to entitle the city to its distributive share of the school moneys of the State, and from the city collector the money raised by tax for the support of schools, and he shall disburse the same only by the order and upon the warrant of the board of education, drawn in favor of the person entitled to payment, signed by the presiding officer of the board and countersigned by its secretary.

§ 7. The treasurer shall give such bonds for the faithful performance of his duty as the common council may require; and shall report monthly to the board of education his receipts and expenditures, with the balance remaining on hand to the credit of the board, and such other information in relation thereto as the board of education may, from time to time, require.

§ 8. [Repealed by section 13, title 11, chapter 384 of 1854.]

§ 9. The board of education shall present, annually, on or before the first Monday in February, to the common council, an estimate of the money required to be raised in the ensuing year for the support of the schools and for the purchase of school sites, as well as for the building and repairing of school-houses; and the common council shall determine what sums shall be raised for such purposes, respectively, in addition to the amount already required by law, in order to entitle the city to its distributive share of the State school money.

§ 10. The amount of money to be raised for the support of schools in any one year, exclusive of the sums required to purchase sites and to build and repair school-houses, as well as to entitle the city to its share of the State school money, shall not be less than one dollar and twenty-five cents nor more than one dollar and seventy-five cents for each child between the ages of five and sixteen years within the city—as ascertained by the previous census, herein required to be taken on the thirty-first day of December in each year.

§ 11. The several amounts so determined by the common council to be raised, as aforesaid, shall be levied upon all the taxable property of the city, in the same manner and at the same time as the taxes for city purposes, and shall be stated and sent to the board of county supervisors to be levied and collected accordingly.

§ 12. The board of supervisors, in their warrant to the collector, shall direct him to pay the amount so to be collected to the treasurer of the city, to the credit of the board of education, out of the first moneys collected.

§ 13. It shall be the duty of the first board of city assessors elected after this law shall take effect to estimate the value of the school property of each school district, as heretofore existing, and certify the same to the board of supervisors. The supervisors shall thereupon proceed to equalize the said value by assessing the aggregate amount thereof upon the whole city, and crediting each school district, on account of its general tax, with the value

of its separate school property, and its special school taxes already laid and in progress of collection.

§ 14. The board of education shall determine the number and location of schools; but no expenditures for the purchase of ground or the erection of school-houses shall hereafter be made, unless the same shall have been approved by the common council. Such approval shall be deemed to have been given when the tax therefor shall be approved by the common council and levied by the supervisors; or it may be specially given, upon the application of the board of education to make such expenditure, in anticipation of a tax to be levied in the ensuing year.

§ 15. The title of all the property now or hereafter to be required for school purposes shall be vested in the board of education.

§ 16. The board of education shall determine whether any and what portion of the State appropriation and the county tax, designated as library money, shall be applied to the purchase of school libraries and apparatus, and the disposition thereof; and the residue of said money shall be applied to the payment of teachers' wages or for the purchase of school books, and to no other purpose.

§ 17. The money raised for the purchase of school sites, and the building, repairing and furnishing of school-houses, shall be known as the "the special school fund," and all other moneys as the "general school fund;" and it shall be the duty of the board of education to keep accurate accounts of its receipts and expenditures, distinguishing between those of a general and those of a special character; and it shall not be lawful to expend any portion of the moneys raised for the use of one of said funds for the purposes of the other of said funds, but the expenditures shall be made in conformity with the appropriations under which the funds were levied and collected.

§ 18. The board of education shall make returns annually, to the common council, of its receipts and expenditures, specifying those on account of the general and special funds, respectively, with such other details as the common council may from time to time require.

§ 19. No school in said city shall be entitled to any portion of the school moneys, in which the religious, sectarian doctrine or tenets of any particular Christian or other religious sect shall be taught or inculcated, or which shall refuse or prohibit visits or examination by the city superintendent or members of the board of education of said city; provided that this section shall not be deemed to prohibit the use of the Holy Scriptures without note or comment.

§ 20. The schools of the orphan asylum societies in said city shall participate in the distribution of the school moneys, in such manner that they shall respectively receive a sum in proportion to the number of children who shall have actually attended such school without charge during the preceding year, for which school moneys are raised; which sum shall be equal to the amount paid to any of the public schools in said city in proportion to the number of children who shall have actually attended any such school during the said preceding year, actually orphans, or half-orphans.

[*Laws of 1851, chap. 229.*]

§ 15. The amount of money to be raised in any one year for the support of common schools in the city of Brooklyn, exclusive of the sums required to purchase sites, to build and repair school-houses, and to entitle the city to its share of the State school money, shall be such sum as the said common council may deem necessary therefor, not to exceed the amount now allowed by law.

By chapter 384 of 1854, the cities of Brooklyn and Williamsburgh and the town of Bushwick were consolidated into one municipal government. Section 13, title 11 of that act, is as follows:

§ 13. There shall be a board of education, and all the provisions of law relating to the board of education of the present city of Brooklyn shall apply thereto, except that the board hereby authorized shall be constituted of the members of the said present board, and such additional members as may be appointed by the common council for the portion of the city embraced in the present city of Williamsburgh and town of Bushwick, and the said common council is hereby authorized and required to appoint and classify such additional members, having reference therein to the proportional increase of inhabitants by the additional territory; and the school property of the cities of Brooklyn and Williamsburgh and town of Bushwick, and the several districts thereof, shall be valued by the first board of assessors elected after this act shall take effect, and the board of supervisors of the county shall proceed to equalize the said value, by assessing the aggregate amount thereof upon the whole city, and crediting each school district (the city of Brooklyn to be considered as one district), on account of its general tax, with the value of its separate school property, and any special school taxes already laid and in process of collection. The eighth and twentieth sections of the act entitled to reorganize and regulate the common schools and board of education of the city of Brooklyn, passed April 4, 1850, is hereby repealed.

[*Chap. 355, Laws of 1866.*]

SECTION 1. The board of education in the city of Brooklyn may annually appoint an assistant city superintendent of common schools, who shall perform such duties as the said board shall prescribe, and who shall receive such salary out of the general school fund of said city as the said board may determine. He may be removed from office by a vote of a majority of all the members of the board of education.

## BUFFALO.

Title 5, chapter 230, of eighteen hundred and fifty-three, of the assessment and collection of taxes in the city of Buffalo, requires the common council, by a vote of two-thirds of the members elected, to fix the amount of taxes to be collected for various purposes, and to make a statement thereof to be entered in their minutes. In respect to such amount and statement, it enacts:

§ 6. In such amount shall be included the sums required for the support of the free schools of the city for twelve months, and to pay such principal and interest of such portions of the funded debt of the city as shall be due or fall due within eighteen months after the said first day of April, and is not otherwise provided for; the amount determined upon shall be raised as a gross tax on one assessment.

[*Laws of 1853, chap. 230, p. 447.*]

## TITLE VI.—OF PUBLIC SCHOOLS.

SECTION 1. The common council shall possess all the rights, powers and authority, and shall perform all the duties, in and for the city, of commissioners of common schools.

§ 2. The clerk of the city shall be the clerk of the common council, when acting as commissioners of common schools, and shall perform the duties required of the town clerks of the several towns in the State as clerks of the commissioners of common schools of such towns, and be subject to the same penalties for the neglect thereof.

§ 3. In all appropriations of public money for school or other purposes the city shall be regarded as a town in the county of Erie, and shall be entitled to copies of laws in the same manner as other towns in said county, and all such moneys and books shall be paid and delivered to the common council.

§ 4. The common council may expend such portion as they may deem proper of any library moneys hereafter received from the State in binding and repairing the books in the school libraries, in purchasing maps and other apparatus for the schools, and in supplying indigent scholars in the schools under their charge with necessary common school books and other implements of learning.

§ 5. All the public schools organized in the city of Buffalo shall be free to all white children, over the age of five and under the age of eighteen years, residing within their respective districts.

§ 6. All moneys raised for school purposes shall constitute a separate fund, to be called the school fund; a separate account thereof shall be kept by the proper officers of the city, and the moneys shall not be appropriated to any other purpose.

§ 7. The common council shall provide and maintain one or more free schools in the city for the colored children thereof, and may purchase lands, and erect thereon, furnish and maintain, all buildings necessary for such schools; and shall from time to time raise all money necessary for these purposes by general tax.

§ 8. The common council may, whenever they shall deem it expedient, establish, maintain and regulate a central school, in which shall be taught all such branches of education as may be authorized by the school committee and superintendent of schools of the city of Buffalo, and buy such land and erect such buildings thereon as may be necessary for the purposes, and raise the necessary money as a part of the general city tax: such school shall be entitled to its pro rata share of the literature fund of the State equally with and on the same footing with the academies and high schools of the State, under the charge of the Regents of the University of the State. And said school shall participate annually in all appropriations made, or which shall be made, for the support of teachers' classes in academies, and to the same extent and upon the same terms and conditions as provided by chapter four hundred and ten, of the Laws of eighteen hundred and fifty-five, for the participation in such appropriations, of academies selected, or which shall be selected, by the board of Regents of the University, for the instruction of teachers' classes. [*As amended by section 12, chapter 272, Laws of 1861, p. 620.*]

§ 9. The common council shall have power, and it shall be their duty, whenever it may be necessary:

1st. To purchase or lease, in any portion of said city, land for school-houses, and to fence and improve the same;

2d. To build on such lands, or any lot owned by any district in said city, such buildings as shall on them appear suitable;

3d. To complete, improve, enlarge or repair any school-house, from time to time to supply it with fuel and such school apparatus, books, furniture and appendages as may be necessary, and to prescribe the studies to be pursued therein;

4th. To make such ordinances as they may deem necessary for the prosperity, good order and government of the schools, and the security and preservation of the school-houses and other property belonging to the school department of the city, and to prescribe the duties and powers of the superintendent of schools and school examiners, in all cases not provided for in this act;

5th. To divide the schools in said city into primary and higher departments, or otherwise, to prescribe regulations for the transfer of scholars from one department to another, and to direct the superintendent to provide suitable and sufficient instructors for each department;

6th. To order, from time to time, a tax to be levied upon the taxable property of any district, sufficient to pay all such sums as they may deem necessary to be expended in such



district for the purchase of or payment for land therein, and the building, furnishing and repairs of school-houses and their appurtenances, and no expenditures for repairs less than twenty-five dollars shall be a charge upon the district, but the common council shall assess the cost of any expenditure larger than twenty-five dollars upon the taxable property of the district. [*As amended by section 13, Laws of 1861, chapter 272, p. 630.*]

7th. To appoint, from time to time, a board of examiners, to consist of three persons, whose duty it shall be, at least once in each school term, to visit and examine all the departments of the several public schools, and to report to the common council, at the close of each term, their condition and progress. Such examiners shall be paid by the city not exceeding two dollars for each day actually spent by them in such examinations, not exceeding fifty days each in any one year.

§ 10. Whenever the common council shall hereafter order a lot to be purchased and a school-house to be built thereon, except for the purpose of a central school, they shall describe the district upon which the expenses of the purchase of such lot and the building of such house shall be assessed, and the expenses of such lot and building shall be assessed by the board of assessors, in the same manner as other assessments are made, upon the taxable property of that district only, except as instituted in the next section.

§ 11. When such new district shall be composed, in whole or in part, of one or more previously existing districts, in which there shall be one or more public school-houses, the assessors, in making the assessment for such new lot and building, shall charge and assess upon the remaining portions of such districts, respectively, such sums as to them shall appear just, having regard to the actual value of such lots and buildings, as well as to the sums paid therefor by the property included in such new district, and the balance shall be assessed upon the taxable property in such new district. But all such sums shall be included in one assessment roll, and shall be collected in the same manner as other assessments. [*As amended by section 13, chapter 99, of 1856.*]

§ 12. The superintendent of common schools of the city shall be the executive officer of the common council, to carry into effect all the provisions of this act, and the ordinances and orders of the council in respect to common schools; and the common council may assign to the said superintendent the performance of any duty required of them in respect to the common schools of said city. He shall, in respect to the common schools of the city, possess all the powers and authority, and be subject to the duties and obligations, of the inspectors of common schools of the different towns of this State. He shall also have power, and it shall be his duty:

1. To have the care and custody and provide for the safe keeping of public school-houses in said city;

2. To contract with and employ all teachers of the several public schools therein, under the direction of the common council;

3. To contract for and superintend the building, enlarging, improving, furnishing and repairing of all school-houses ordered by the common council, and all repairs and improvements around the same;

4. In cases where no other provision is made by this act, to supply the place and perform the several duties in respect to the several school districts in said city required of the trustees of the several school districts in this State by the general statutes relating to common schools;

5. To perform such other duties as may be from time to time imposed upon him by the common council.

§ 13. The common council shall annually publish a statement of the number of public schools in the said city, the number of pupils instructed therein the year preceding, the several branches of education pursued by them, and the receipts and expenditures of each school, specifying the sources of such receipts and the objects of such expenditures.

[*Laws of 1856, chap. 123, section 30, p. 187.*]

§ 30. The schools established and maintained by the Buffalo Juvenile Asylum shall participate in the distribution of the common school fund, in the same manner and degree as the common schools of the city of Buffalo.

#### DISTRICT No. 1—CAMILLUS AND GEDDES.

[*Laws of 1852, chap. 249, p. 378.*]

SECTION 1. The legal voters in joint school district number one, formed from parts of the towns of Camillus and Geddes, in the county of Onondaga, are hereby authorized, from time to time, at any meeting of said school district, to empower, by resolution, the trustees of said district to keep the accounts of the wages of the teacher of the highest department of the principal school in said district separate from the accounts of the wages of the other teachers in said district, and to apply a just proportion of the public money to the payment of such teacher's wages, and to make out a separate rate bill for the collection of the remainder of such teacher's wages from the scholars that were instructed by the principal teacher, which rate bill shall be collectible in all respects as other rate bills are collected.

#### DISTRICTS Nos. 2, 3, 5 and 7, IN CASTLETON.

[*Laws of 1855, chap. 510, p. 942.*]

SECTION 1. The trustees of each of the school districts, two, three, five and seven, in the town of Castleton, in the county of Richmond, shall annually, at least three weeks before

their annual meetings, or three weeks before a special meeting which may be called for that purpose, in their respective districts, prepare an estimate of the amount which they shall deem necessary to pay the debts of their districts and for the support of common schools therein for the ensuing year, exclusive of the money which they may be entitled to receive from the town superintendent, and including the sum required for building, for the purchase of necessary furniture, apparatus and books, and for contingent expenses, and shall cause notice thereof to be posted for two weeks previous to said meeting, in at least five of the most public places in the district. And they shall present such estimate at such meeting, when the inhabitants so assembled shall vote thereon for each item separately, and the same, or so much thereof as shall be approved by a majority of such inhabitants, shall be levied and raised by tax on such district, as now prescribed by law for raising school district taxes.

§ 2. When the trustees shall have completed any tax list, they shall annex to such tax list a warrant, directed to the collector of the district, for the collection of the sums of money in such list mentioned, returnable in thirty days, and take from such collector approved security for the performance of his duty. Such warrant may be renewed from time to time, as now provided by law for the collection of district taxes. The money so collected shall be paid to said trustees, and by them appropriated to the purpose for which the same was voted, unless otherwise directed by a vote of the inhabitants at their annual district meeting or a special meeting called for the purpose.

§ 3. The tax hereby imposed shall be a lien upon the lands taxed, to be enforced and collected by sale, in the manner that county taxes are collected, upon a return to be made by said collector to the treasurer of the county of all unpaid taxes in said district.

[Chap. 447, *Laws of 1859, p. 1056.*]

SECTION 1. The provisions of the above act are extended and made applicable to school district number six in the towns of Castleton and Southfield, Richmond county.

#### DISTRICT No. 1—CASTLETON AND SOUTHFIELD.

[*Laws of 1855, chap. 280.*]

SECTION 1. School district number one, in the towns of Castleton and Southfield, in the county of Richmond, shall form a permanent school district, and shall not be subject to alteration by the town superintendent of common schools for the towns in which said district is situated.

§ 2. The said district shall be under the direction of a board, to be styled "The board of education," which board shall consist of three members, two of whom shall constitute a quorum for the transaction of business. James O. Ludlow, James Anketel and Theodore Freen shall compose the first board of education, and hold their office from one to three years; that is to say, one shall go out of office in each year, and in the order in which their names stand recorded in this section.

§ 3. At the annual meeting of said district, in each year, there shall be elected for three years one member of said board of education, who shall be a resident and taxable inhabitant of said district; said election, and all other elections provided for by this act, shall be held by three inspectors, to be appointed by said meeting or the moderator thereof, as the people assembled in annual meeting may determine; said election shall be by ballot, and shall be conducted in all respects and in the same manner as is now provided by law for the election of trustees in school districts in this State.

§ 4. The said board of education may make all necessary by-laws for their government; they shall have the entire control and management of all the common schools within said district, and all the property belonging to the same, and they shall have and possess, within said district, all the rights, powers and authority of town superintendent of common schools, and they shall provide for keeping a school in said district at least eight months in each year, and as much longer as may be deemed practicable; they may appoint a collector, with all the powers and duties of a district collector, or may employ the town collector of either of said towns for that purpose, and such collector shall collect and pay over the school moneys assessed upon said district to the said board of education, in the same manner and under the same conditions as is imposed by the laws of the town of which he is such collector. They shall require at least one of the members of said board to visit each school in said district at least once in each week, to render such assistance to the teacher and advice to the pupils as may be necessary, and to see that the regulations are rigidly adhered to.

§ 5. The said board of education are hereby authorized and directed to levy and collect by tax, in each year, upon all the taxable property and inhabitants in said district, such sum as may be necessary, not exceeding in amount three-fifths of one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the said towns of Castleton and Southfield, and shall be ascertained from the last assessment rolls of said towns; and the said board shall add to their warrant, for collection of such taxes, such amount as they may deem proper for fees for collection, not exceeding five per cent on the amount. [*As amended by chapter 116, Laws of 1864.*]

§ 6. The said tax shall be laid and collected between the first day of February and November, in each year. [*As amended by chapter 74, of 1856.*]

§ 7. The town superintendents of common schools of the towns of Castleton and Southfield shall pay over to the board of education all the public moneys to which said district number one shall be entitled for school purposes.

§ 8. The said board of education shall call an annual district meeting at such time in the year as they shall think proper, and submit thereto a full report, in writing, of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge, and the number of the scholars attending the same, the studies pursued, the amount of moneys received from the State, as well as the amount raised in the district for school purposes, and the expenditure of the same, and generally all the particulars relating to the schools in said district, which report, if said board think proper, may be published in pamphlet form, or in some newspaper published in the county.

§ 9. The board of education shall have entire control of the district library; they may employ a librarian, make such additions to the library and such regulations in relation thereto as they may deem necessary or proper.

§ 10. A school for colored children may be organized and be supported as the other schools in said district under this act.

§ 11. The said board of education may call special meetings of said district whenever they may deem it necessary; and whenever a special meeting shall be called, notices of it shall be posted up in five public places in said district, at least one week previous to said meeting, and no business shall be transacted at such meeting except that stated in the notice calling the same.

§ 12. [Temporary, authorizing certain taxes for the completion of school-houses. See this section as amended by § 2, chapter 74, of 1856.]

§ 13. All laws and parts of laws inconsistent with this act are hereby repealed, so far as they relate to district number one, in the towns of Castleton and Southfield, in the county of Richmond.

§ 14. All the rights, powers and duties conferred on the trustees of said school district, by the annual meetings held therein in the years one thousand eight hundred and fifty-one and one thousand eight hundred and fifty-two, are hereby transferred to said board of education, who are hereby authorized and empowered to do all the acts that the said trustees were required to do by the proceedings of said annual meetings.

[Laws of 1856, chap. 74.]

\* \* \* The said board of education are hereby empowered and directed to keep the said school-houses belonging to the said district, together with the furniture, library and scientific apparatus, insured in such sum as they may deem to be the true value thereof, and to levy and collect the cost and expense of the same, as hereinbefore provided.

5. The said board of education are hereby authorized and empowered to purchase a suitable lot of ground, as a site upon which to erect a school-house for colored children, on the most reasonable terms which they can, and to pay for the same out of the moneys now in their hands for that purpose; and if the same shall not be sufficient to pay for said lot and erect the house thereon, the said board of education are hereby authorized, empowered and directed to levy and collect, by a tax upon all the taxable property and inhabitants in said district, such sum, not exceeding three hundred dollars, as may be necessary and sufficient to purchase said lot and erect said house.

#### DISTRICT No. 3, IN CHERRY VALLEY.

[Laws of 1853, chapter 171, p. 305.]

SECTION 1. School district number three, in the town of Cherry Valley, in Otsego county, shall be free to all children between the ages of four and twenty-one years residing in said district.

§ 2. The trustees of said district shall have the power, and it shall be their duty, to raise from time to time by tax, to be levied equally upon all the real and personal property in said school district which shall be liable for ordinary school district taxes, such sum or sums of money, not exceeding three hundred dollars in any one year, as the trustees of said district may deem necessary for the payment of teachers' wages, after applying all other moneys belonging to said district which may be applicable to the payment of the wages of teachers.

#### CLYDE HIGH SCHOOL.

[Laws of 1834, chapter 175, as amended by chapter 268, Laws of 1842.]

SECTION 1. School district number seventeen, in the town of Galen, in the county of Wayne, shall form a permanent school district, not subject to alteration by the town superintendent of common schools of the said town of Galen, and shall hereafter be known by the name of "The Clyde high school."

§ 2. The trustees of the Clyde high school shall be seven in number; and the first trustees shall be George Burrell, John Condit, Sylvester Clark, Cyrus Smith, Isaac Lewis, William S. Stow and Calvin D. Tompkins; and shall hold their offices until the first annual meeting of said permanent school district, and until others are chosen.

§ 3. Said trustees are authorized to receive gifts, grants and donations towards defraying the expenses of purchasing a site and building a suitable school-house for said high school.

§ 4. Said trustees, on receiving the sum of one thousand dollars, or having the said sum secured to be paid to them by subscription or otherwise, shall have power to levy and cause to be raised by tax, upon the taxable inhabitants of said permanent school district, a like sum of one thousand dollars; but no such tax shall be levied until said trustees shall have

called a special meeting of the taxable inhabitants of said permanent school district, in manner now provided by law for calling special school district meetings.

§ 5. Said trustees shall report in writing to said meeting the amount of moneys received by them, the sum or sums secured to be paid to them, and the manner in which it is secured; and if the sum of one thousand dollars appears to be paid or is secured to be paid to said trustees, said meeting shall proceed to elect a clerk and collector for said high school, who shall hold their offices until the first annual meeting of said permanent school district, and until others are chosen.

§ 6. The trustees hereby appointed, and clerk and collector hereby directed to be chosen, shall be subject to the same penalties, and shall have the same powers and perform the same duties, as like officers directed to be chosen by chapter fifteen, title second and article fifth of the Revised Statutes, and all subsequent elections shall be held under that act.

§ 7. The trustees of said high school shall select a suitable site in the village of Clyde for the erection of their school-house, and shall contract for and purchase the same, and thereon erect a school-house of sufficient size to accommodate such children as may be required to be educated in said permanent school district, and shall furnish the necessary furniture and fixtures for the same.

§ 8. School districts fourteen and seventeen, or either of them, may sell their district property, and pay the amount of money arising from such sale or sales to the trustees of the Clyde high school.

§ 9. Said trustees, on receiving such moneys, shall, if required by either district, deduct the amount from that part of the tax hereby directed to be imposed on the taxable inhabitants of the individual district paying the same.

§ 10. The school money, which school districts number fourteen and seventeen shall from time to time be entitled to receive from the commissioners of common schools in the town of Galen, shall be paid to the trustees of the Clyde high school, who shall be required to report to said commissioners in the same manner as other school districts are by law required to report.

§ 11. The trustees receiving such moneys shall give their receipt for the same, and shall apply the money received exclusively to the payment of the teachers employed by them; and it may be applied in such manner as to render the tuition of such poor children in said district as they may deem proper, gratuitous.

§ 12. It shall be the duty of the trustees of the said high school to make an annual report, to the Superintendent of Common Schools, of the state and condition of the said school.

§ 13. The trustees shall have the general superintendence of all schools taught in said school-house, and shall employ as many teachers and assistants as they shall deem necessary, and shall direct the course of instruction, and regulate all the internal concerns of said school. [Section 2, act of 1842.] The trustees of said Clyde high school may from time to time rent or lease, for scholastic purposes, such rooms or apartments in their school-house as in their judgment may not be required for the use of schools therein established by them.

[Chap. 192, Laws of 1858, page 313.]

SECTION 1. The board of the trustees of the Clyde high school shall have the power, and they are hereby authorized, to raise, from time to time, by tax, to be levied equally upon all the real and personal property in said high school district, which shall be liable for ordinary school district taxes, such sum or sums of money, not exceeding one-half of one per cent in any one year, as the trustees may deem necessary for the payment of teachers' wages, after applying all other moneys belonging to said district applicable to teachers' wages; not more than two taxes for such purpose shall be raised in any one year.

§ 2. Said high school shall be free to all children between the ages of four and twenty-one years, residing in the district.

§ 3. Said board of trustees may call special meetings of the inhabitants of said high school district whenever they may deem it necessary, or whenever petitioned by twenty-five of the taxable inhabitants of said district; they shall give notice of the same by posting up a written or printed notice thereof in at least three public places in said district, at least one week previous to the time fixed for such meeting. Such notice shall state the time and place of holding such meeting, and the purpose for which the same is called, and no business shall be transacted at any such meeting except that stated in the notice calling the same.

§ 4. Whenever, in the opinion of the trustees, it becomes necessary to build an additional school-house, or houses, in the district, or enlarge or repair the one already built, they shall submit the plans and estimated cost thereof to the electors of said district, at a special meeting to be called for that purpose, and if a majority of such electors, present at said meeting, shall vote in favor of the same, the trustees may carry the same into full effect.

§ 5. The trustees shall prepare and submit to each annual meeting of said district, an estimate for the amount necessary for defraying the contingent expenses of the school for the ensuing year, specifying the purposes for which the same is to be expended.

§ 6. The trustees shall, at the annual meeting, submit a full report in writing of their doings as trustees, and shall state therein the number of teachers employed in said school, the amount of salary paid to each teacher, the number of scholars attending the same, the studies pursued, the amount of moneys received from the State, and from all other sources, as well as the amount raised in the district, the expenditures of the same, and all the particulars in detail relating to said school.

## CLARKSON.

[*Chap. 154, Laws of 1859, page 390, as amended by chap. 511, Laws of 1866, p. 1119.*]

SECTION 1. All that part of the town of Clarkson, in the county of Monroe, known as lots seven, eight, eleven, twelve, thirteen, fourteen, fifteen, seventeen, eighteen, nineteen, twenty, and twenty-one, and the north half of lots twenty-two and twenty-three, in section five, township four of the triangular tract; that part of lots one and two, and the northeast part of lot six, all in section six of the same town, and lately owned by Theodore Downs and now owned by John F. Hamlin; lots seven and eight in section six, and lot one (the farm now occupied by Samuel C. Perry); lots seven and eight in section ten, and lot seven and the west and middle parts of lots two and three to the east line of the farm now occupied by Frederick Nellis, in section thirteen in said township four, shall hereafter constitute a single school district for the purposes hereinafter mentioned, and for the purposes of a common school shall be known as school district number two, in said town of Clarkson; and all of the lands within the boundary lines of said Clarkson high school district as aforesaid, shall be taxed for the support of said high school. [*As amended by chapter 511, Laws of 1866, p. 1119.*]

§ 2. On the first Tuesday in May next, commencing at two o'clock in the afternoon, there shall be a meeting of the inhabitants of the district mentioned in the first section of this act, entitled by law to vote for the election of trustees of common schools, at which there shall be separately elected five trustees of said district: the person first elected shall hold his office for five years, the second for four years, the third for three years, the fourth for two years, and the fifth for one year from the said first Tuesday in May; and a similar meeting shall be held annually thereafter on the first Tuesday in May, at the school-house in said district, at which there shall be elected one trustee to supply the place of the trustee whose term of office shall then expire, each trustee so elected to hold his office for five years. The present trustees of said school district number two shall cause notice of the meeting on the first Tuesday of May next, stating the time, place and object thereof, to be posted in three public places within the said district, at least one week before the time appointed for said meeting, and similar notice of the annual meetings thereafter shall be given by the trustees then to be elected, and their successors. If there shall be a failure to elect a trustee at any annual meeting, the trustee whose term of office would then expire shall hold until another shall be duly elected in his place.

§ 3. All laws and regulations which now are or hereafter may be made applicable to the election of trustees of school districts, shall apply to the elections to be held under the second section of this act, so far as they shall be consistent with the terms of this act.

§ 4. The trustees to be elected under the second section of this act, shall constitute a body politic and corporate, by the name and style of "The trustees of the Clarkson high school," and shall possess all the powers and be subject to all the duties in respect to said district that the trustees of common schools now possess or are subject to, and such other powers and duties as are given or imposed by this act. When five trustees shall have been elected in pursuance of the second section of this act, they shall be immediately invested with all the rights and powers, and become subject to the duties of the present trustees of school district number two before mentioned, and the powers of the present trustees shall thereupon cease.

§ 5. The trustees to be elected by virtue of this act shall have power to organize, establish and maintain a classical school in said district, to be known as the "Clarkson high school," which school shall be an academy, and shall be subject to all laws and regulations applicable to other incorporated academies in this State, so far as shall be consistent with this act, and shall be entitled to a share in the distribution of the income of the literature fund, upon the same terms as other academies; and the Regents of the University shall recognize such academy as such, as soon as the required sum shall properly be invested in buildings, library and apparatus, and competent teachers employed.

§ 6. The trustees shall appoint one of their number president of their board, who shall preside at the meetings of said board when present, and when absent a president pro tempore shall be appointed in his stead. They shall also appoint a secretary who shall hold his office during their pleasure, and who shall record all the acts, doings and resolutions of said board, and also of the meetings of the taxable inhabitants of said district, of which meetings he shall be the secretary, and in his absence a secretary pro tem. shall be appointed to discharge all such duties. They shall also appoint a collector and a treasurer, who shall respectively hold their offices for one year, and until others are appointed in their places, unless sooner removed by said board. Such collector and treasurer, before entering upon the duties of their offices, shall execute and deliver to said board a bond in such penalty and with such sureties as such board may require.

§ 7. Whenever a vacancy shall occur in said board of trustees by the death, removal from the district, or resignation of any trustee, the remaining trustees shall have power to appoint a person to fill such vacancy, and the person so appointed shall hold his office for the unexpired term of the person to supply whose place he shall have been appointed.

§ 8. The taxable inhabitants of said district at any annual, special, or adjourned meeting, legally held, may vote to raise such sums of money as they shall deem expedient, not exceeding fifteen hundred dollars, for the purpose of purchasing a site and building a school-house in said district, or for the purpose of purchasing any suitable lot or building for such purpose, and furnishing the same with the necessary furniture, library, and apparatus, and may direct the trustees to cause the same to be levied and raised upon the real and personal estate liable to taxation in said district, by installments, as such meeting may direct, and to

make out a tax for the collection of the same as often as such installments shall become due; and the legal voters at any such meeting may fix the compensation for collecting and paying over to the treasurer of said board the amount so levied. They shall also have power, in like manner, from time to time, to raise such sums as shall be deemed necessary for the payment of teachers' wages, for keeping insured and in repair their real and personal property, for the purchasing of fuel and for defraying the other ordinary expenses of maintaining schools; but no tax shall be levied upon said district without the assent of the majority of the legal voters thereof, except as now provided by law.

§ 9. The trustees to be elected by virtue of this act may purchase from the trustees of the Clarkson academy, who are hereby authorized to sell to them, the real and personal property now owned and possessed by the trustees of said academy, upon such terms as may be agreed upon by said parties; but no money shall be paid or engagement entered into for the purchase of said real estate, unless a conveyance thereof shall be made to the trustees, to be elected by virtue of this act, by the trustees of the first Congregational society of the town of Clarkson, and the trustees of Clarkson academy, so as to vest in the grantees a perfect title thereto, in fee simple. The trustees of said Congregational society are hereby empowered, in their discretion, to execute such conveyance.

§ 10. The trustees to be elected by virtue of this act are hereby authorized and empowered to sell at public auction, to the highest bidder, or at private sale, and to convey to the purchaser the school-house and site thereof, situated in said district, and to hold and use the proceeds for the purposes specified in this act.

§ 11. The trustees to be elected as above provided are hereby empowered and authorized to make such by-laws and regulations as they may deem necessary to secure the prosperity, order and government, of said schools, and to divide the same into primary and higher departments, and to regulate the transfer of scholars from one department to the other; and to provide suitable instructors for each department; to direct what text books shall be used in the same; to establish such primary or infant school or schools as they shall deem requisite and expedient, and to alter and discontinue the same; to purchase or hire school-houses, rooms, lots or sites for school-houses, and to fence and improve the same as they may think proper; to purchase, exchange, improve and repair school apparatus, books, furniture and appendages; to purchase fuel and all other necessities for the use of the school or scholars in said district, and to pay the contingent expenses thereof; to pay the wages of all teachers employed in the school or schools in said district, out of the public money and funds applicable thereto; to fix and regulate the terms of tuition fees in said primary and other higher branches in said school or schools; to sue for and collect in their corporate name any sum of money or tuition fees due to said district; to receive and apply to the use of said school or schools, or any department thereof, any gift, legacy, bequest or annuity given or bequeathed to them, and to apply the same according to the instructions of the donor or testator; to take and hold any real estate granted or devised to them for the purposes of said school or schools, or any department thereof, and to apply the proceeds thereof according to the instructions of the donor or deviser, if not inconsistent with the purposes of public education and the laws of the State.

§ 12. The report now required by law to be made to the commissioner of common schools shall be made by said trustees; and the public moneys payable to said district in the manner provided by law, shall be paid to the treasurer appointed by such trustees, whose receipt shall be sufficient voucher for all money so paid.

§ 13. Said trustees shall have power to receive into said academy and cause to be instructed therein any pupil or pupils residing in or out of said district, and to regulate and establish the terms of tuition of such resident or non-resident pupils, and to regulate generally the rates of tuition, and to graduate the same according to the studies pursued in the higher English and classical departments of said academy; the tuition fees in said academy shall not exceed three dollars per quarter for pupils whose parents or guardians reside within the said district, and for all other pupils shall not exceed five dollars each per quarter.

§ 14. After applying the public moneys applicable thereto, and the tuition fees which may be received for the instruction of pupils, in payment of the salaries and wages of teachers employed in said schools, and of the other expenses necessary for the support thereof, the said trustees shall, unless the same shall have been previously raised, cause such additional sum as may be required to pay such wages, salaries and expenses to be assessed and levied upon the taxable property of said district, and collected in the manner provided by law for the assessment and collection of school district taxes in the several towns of this State. Not more than two taxes for such purposes shall ever be raised in one year; and warrants for the collection of taxes in said district shall be issued under the hand and seal of the president or the major part of said trustees.

§ 15. All moneys raised in said district for the purpose of said school or schools, and all moneys to be received by such district from the common school fund, literature fund, or other source, shall be paid to the treasurer of said district, to be paid by him on the warrant of said board of trustees, and to be applied by them for the use of the said school or schools, according to the provisions of this act.

#### COHOES.

[*Laws of 1855, chapter 352, p. 631, as amended by chapter 599, Laws of 1857.*]

§ 50. The common schools in said village shall be free to all children, between the ages of four and twenty-one years, residing therein.

§ 51. There shall be erected in each ward one or more school-houses belonging to said village.

§ 52. The title of the school-houses, lots, furniture, books, libraries and apparatus, and all other school property which has been heretofore or may be hereafter acquired, either as school districts or by the village and within the bounds thereof, shall be vested in the village of Cohoes, and while the same are used for school purposes they shall not be levied upon or sold by virtue of any warrant or execution, nor be subject to taxation; and the said village may take, hold and dispose of, in its corporate capacity, any real or personal property transferred to it by gift, grant, bequest or devise for the use of the common schools in said village.

§ 53. The trustees of the village may, upon the recommendation of the board of education, as hereinafter mentioned, sell any of the school-houses, lots or sites, or any other school property now or hereafter belonging to said village, provided that the proceeds of such sale or sales shall be paid to the treasurer of the village and remain in his hands as a fund for the erection of school-houses, unless the same shall have been otherwise appropriated by a vote of the inhabitants entitled to vote for raising taxes in said village.

§ 54. The school commissioners shall constitute and be styled the "board of education of the village of Cohoes," which shall be a corporate body in relation to all the powers and duties conferred upon them by this act.

§ 55. The members of the board of education shall not receive any compensation for their services, except that the chairman thereof may be entitled to receive at and after the rate of one dollar and fifty cents per day for the time he is actually employed (to be verified by his affidavit), but in no case shall the compensation so paid exceed the sum of one hundred and fifty dollars per annum.

§ 56. Any member of the board of education in said village may be removed from office, for official misconduct or neglect of duty, by the trustees of said village; but a written copy of the charges against said trustee shall be served upon him, and he shall be allowed an opportunity to refute such charge of misconduct or neglect of duty before removed.

§ 57. The chairman of the board of education shall see that the school-houses, buildings, or any other school property belonging to said village, is not unnecessarily injured or destroyed. He shall visit each of the schools in said village at least once in three months, and shall perform such other duties as may be required of him by said board of education; or otherwise he shall, in connection with any three or more members of the board of education, or if he may deem it advisable, request the attendance of any one or more of the inhabitants of said village whom he may think competent to assist him for that purpose, examine and license all school teachers in said village.

§ 58. The said board of education shall be trustees of the school library or libraries in said village; and all the provisions of law, which now are or may hereafter be enacted relative to school district libraries, shall apply to said board of education.

§ 59. The clerk of the village shall be clerk of the board of education, and librarian; and, as such librarian, shall perform all the duties which are or may be required by the general school laws or this act. As clerk of the board of education, he shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe; and the said record, or a transcript thereof, certified by the president and clerk, shall be received in all courts as presumptive evidence of the facts therein set forth; and such records, and all the books, accounts, vouchers and papers of said board shall at all times be subject to the inspection of the trustees of the village or any committee thereof. The board of education shall prescribe the compensation of the clerk for his services as clerk of the said board, and librarian, not exceeding the sum of one hundred and fifty dollars. [As amended by chapter 599, Laws of 1857, p. 307.]

§ 60. The said board of education may allow the children of persons not resident within said village to attend any of the schools therein under their custody or control, upon such terms as they shall prescribe in their by-laws or resolutions for the government and management of said schools.

§ 61. The said board shall have the power, and it shall be their duty:

1. To organize and establish in said village so many and such schools as they shall deem requisite and expedient, and to alter and discontinue the same, in their discretion;

2. To hire school-houses and rooms for the purposes of said school, when necessary;

3. To alter, repair and improve school-houses belonging to the village, and their appurtenances;

4. To purchase books for indigent pupils, and to purchase and repair furniture, school apparatus and other necessary articles, including libraries;

5. To have the custody, control and safe keeping (except as herein otherwise provided) of the school-house buildings, lots or any other school property belonging to said village of Cohoes, and exercise the powers and discharge the duties, in respect to said schools, both of trustees of school districts and of town superintendent of common schools;

6. To contract with and employ all teachers in said schools, and at their pleasure to remove them;

7. To pay the wages of such teachers out of the public money appropriated and provided by law for that purpose, so far as the same shall be sufficient, and to pay the balance of such wages from the money authorized to be raised for that purpose by section sixty-four of this act;

8. To defray the necessary contingent expenses of the board, including the compensation of the chairman and the clerk for his services as clerk of the board of education and librarian, under the provisions of this act, from the contingent fund;

9. To have in all respects, unless otherwise provided in this act, the superintendence, supervision and management of the schools in said village, and from time to time may adopt, alter, modify and repeal all rules and regulations for their organization, government and instruction, as they may deem expedient for the reception of the pupils, and their

transfer from one school to another, and generally for the promotion of good order in said schools;

10. To report to the village trustees whenever in their opinion it may be advisable to sell any school-houses, lots or sites, or other school property belonging to the village;

11. To cause an enumeration of all the children within said village, between the ages of four and twenty-one years, to be made between the first and fifteenth day of January in each year; and the chairman shall report the number of such children, at the time and in the manner required by law of town superintendents of schools;

12. To make and transmit, between the first days of July and August in each year, to the county clerk of Albany county, a like report in all respects, as near as practicable, as is by law required by town superintendents of schools, and to furnish such information, relating to the schools in said village, as may from time to time be required by the trustees thereof or by the State Superintendent of Public Instruction.

§ 62. It shall be the duty of the chairman of the board of education between the first and fourth days of April in each year, to make a report to the village trustees, showing:

1. The number of scholars between the ages of four and twenty-one years, residing in said village, who have attended the free schools therein during the preceding year, and the number attending each school, also the number under four years of age attending said schools;

2. The number of scholars not residing in said village, but who have attended the common schools therein during the same time;

3. The amount of public moneys received by the village treasurer applicable to teachers' wages, and the amount applicable to school libraries;

4. The amount of moneys raised by the village trustees under section sixty-four of this act, and the portions thereof appropriated to the respective funds;

5. The moneys received from the sale of school property belonging to the village;

6. All other sums received by the treasurer and appropriated to the purposes of the common schools;

7. The manner and purposes for which such sums of money shall have been expended, specifying the amount paid under each head of expenditure;

8. An estimate of all sums necessary and deemed desirable by said board to be raised, for all school purposes for the then present year, under the provisions of this act, except the amount to be raised for the contingent fund, which estimate shall state the specific sum necessary to be raised for each item therein.

§ 63. The village trustees shall cause the report and estimate, required by the last preceding section, to be published in one or more of the papers published in said village for two weeks next preceding the annual election.

§ 64. The trustees of said village shall have the power, and it shall be their duty, to raise from time to time by tax, to be levied equally upon all the real and personal property in said village which shall be liable for the ordinary village taxes, such sum or sums of money as the board of education shall deem necessary for any or all of the following purposes:

1. To lease school rooms or houses, and also to build or purchase school-houses, or to purchase and improve sites therefor, but no greater sum than fifteen hundred dollars shall be appropriated to the building or purchasing of school-houses, or the purchasing and improving sites therefor in any one year.

2. To alter, enlarge, repair and improve school-houses and their out-houses belonging to the village, but no greater sum than would in the aggregate amount to fifty dollars for each school-house shall be appropriated annually;

3. To raise a sum which shall not exceed seventy-five dollars annually, to purchase and repair furniture, for books for the district school library, and for purchasing books for indigent pupils;

4. To procure fuel and to purchase stoves and heaters and repair the same;

5. To pay the wages of teachers which may be due after the application of the public school moneys, and all other moneys received by said board which may by law be appropriated and provided for that purpose; but in no case shall the moneys so raised for the payment of teachers' wages be less than fifty-five cents nor over one dollar per year for each child in said village between the age of four and twenty-one years.

§ 65. The trustees of said village shall have the power, and it shall be their duty, from time to time, and at the same time the other village taxes are levied and collected, to levy and raise a tax of fifty cents from each male inhabitant of the age of twenty-one years residing in said village, and the money so raised shall be paid to the treasurer of the village as a contingent fund for the use of the common or free schools of said village.

§ 66. If any person shall neglect or refuse to pay the tax in the last section named, beyond thirty days after he shall have been notified by the collector to pay the same, he shall forfeit to the village the sum of fifty cents, which, together with said tax, and five cents in addition thereto for collector's fees, may be enforced and collected as other penalties are collected and enforced under the provisions of this act. The affidavit of the collector that he has demanded such tax from the person so assessed, and the non-payment thereof to him, shall be conclusive evidence of such demand, and refusal, and neglect. The collector shall receive the same fees for the collection of this, as for other moneys collected by him.

§ 67. The estimate of the sums, recommended by the board of education as necessary to be raised for all school purposes mentioned in this act, shall be submitted at the next annual village meeting by the village trustees, and passed upon, item to item, by the voters then present entitled to vote for raising taxes for school purposes, and adopted or rejected wholly or in part; the vote shall be taken by ayes and nays, or by ballot if ordered by a majority of the voters entitled to vote for such taxes. All persons who have paid the school



tax, in section sixty-five mentioned, shall have the privilege of voting for raising money for school purposes.

§ 68. [Repealed by chapter 180 of 1856. Nos. 30 and 31, *ante*.]

§ 69. All moneys raised by virtue of this act, or received by the said village for or on account of common schools, shall be deposited with the treasurer of said village, to the credit of the respective funds under the control of said board of education, as provided by law, and shall be drawn out in pursuance of a resolution of the said board, by drafts drawn by the chairman, and countersigned by the clerk of said board, payable to the order of the person or persons entitled to receive such moneys; and all accounts so paid shall be accompanied by the affidavit of the owner thereof, setting forth that the claims are reasonable, and that all the articles named were furnished by the direction of the legally appointed officers.

§ 70. The said board of education, in all their expenditures and contracts, shall have reference to the amount of moneys which shall be subject to their order for any specific object during the then current year, and not to exceed the amount so provided.

§ 71. The board of trustees of said village shall have the power to pass such ordinances and regulations as the said board of education may report as necessary and proper for the protection, safe keeping, care and preservation of the school-houses, lots, sites and appurtenances and appendages, libraries and all other school property belonging to or connected with the schools of said village, and to impose proper penalties for the violation thereof, subject to the provisions and limitations contained in this act; and all such penalties shall be collected in the same manner that the penalties for the violation of the village ordinances are by law collected, and when collected shall be paid to the treasurer of the village, and by him placed to the credit of the contingent fund.

[Chap. 599, *Laws of 1857*, p. 307.]

§ 21. The said board of education are hereby authorized to make an agreement with Egbert Egberts for the purchase of the lot and premises in the third ward, now occupied for schools, under a lease from him, provided that the payment therefor shall be made in annual installments, or at the end of six years; and that no greater sum shall be agreed to be paid thereon annually than is now provided by section sixty-four of the act hereby amended, to be raised for the purpose of building or purchasing a school-house, or purchasing and improving a site therefor.

§ 22. In case of the purchase of the lot and premises in the last section named, said board of education may cause the house on said lot to be moved to some other part thereof, and put in good repair for a tenement, to be rented by said board to a teacher, or janitor, or otherwise, as they may deem advisable, provided that the expense thereof shall not exceed the sum of five hundred dollars; and the trustees of the village shall include in their annual tax list or lists, and cause to be raised from all the taxable property in the village, in the same manner that other school taxes are levied and collected, such sum or amounts as the said board of education shall certify to said trustees as necessary to be raised for that purpose, until the whole sum be raised, or said house be fully repaired. The money, when collected, shall be paid to the collector of the village, to be kept as a separate fund, and drawn out as other funds under the control of the board of education are.

§ 23. Said board of education shall have power to establish such rules and regulations in regard to the district school library for the general care and management thereof, in addition to those provided by law, as they may deem necessary, to protect the same from injury and from the loss of any books belonging thereto.

§ 24. The chairman of the board of education is hereby authorized to administer oaths to all persons having accounts to be audited and allowed by said board, as to the correctness thereof; and all oaths heretofore administered by law for that purpose are hereby declared to be valid.

## DEERPARK.

[Chap. 573, *Laws of 1867*, p. 1536.]

SECTION 1. Section one of an act entitled "An act in regard to union free school district number one in the town of Deerpark, and to enlarge its boundaries, and authorize the board of education thereof to raise money to purchase sites, and to build or purchase school-houses," passed April fourteenth, eighteen hundred and sixty-six, is hereby amended so as read as follows:

§ 1. Union free school district number one, in the town of Deerpark, in the county of Orange, is hereby enlarged so as to include within its boundaries all additions made to it by the school commissioner in the year eighteen hundred and sixty-five; and all that part of school district number eight which lies west of the Neversink river, north of a line running due west from the railroad bridge across the Neversink river to the Delaware river, and east of the present west boundary line of said union free school district number one; and the boundaries of said enlarged district shall be as follows, to wit: Beginning on the west side of the Neversink river, on the lands of Charles Weiss, at a large spring situated in the lower edge of the bank of said river, being the original corner of school districts numbers one and eight, and running thence south, seven and one-half degrees east, seven chains and ninety-four links; thence south, seventeen degrees east, three chains and forty-eight links; thence south, one degree west, five chains and forty-six links; thence south, seven degrees west, five chains and twenty-seven links; thence south, twenty-four and three-quarter degrees west, three chains and seventy-eight links; thence south, seventy-one and one-half degrees west, eight chains; thence south, sixty-six degrees west, nine chains and thirty links

to the south end of the west abutment of the Erie railroad bridge across the Neversink river; thence on a course due west sixteen chains to a white pine tree standing on the northerly bank of the Delaware river, near the north-east corner of Laurel Grove cemetery; thence same course to the center of said river; thence up the center of said river to the sluice or waste-way of the Delaware and Hudson canal, on the line between the lands of M. Reeder and Buckley and Brothers; thence along said sluice or waste-way to the Delaware and Hudson canal; thence westerly along said canal to the line between lots numbers forty-four and forty-five of the seventh division of the Neversink patent; thence along said lot line to the north-easterly corner of Barney Gorman's land; thence in a direct line to the lands of Elting Cuddeback; thence along the line of said Cuddeback to the lines between the lands of S. B. Farnum and Simon Westfall, on one side, and A. J. and Isaac Cuddeback on the other; thence along the line between S. B. Farnum and A. J. and Isaac Cuddeback to the north-east corner of the lands of S. B. Farnum; thence north-easterly to a certain corner near a stone standing in the ground; thence along the division line between the lands of A. J. Cuddeback and Solomoni and Benjamin Van Vleet, crossing the highway to the Neversink river to a point nearly or quite opposite to the mouth of Mill brook; thence down the Neversink river to the place of beginning. Said enlarged district shall be known and designated as "union free school district number one." The inhabitants of that part of school district number eight so included as aforesaid in union free school district number one, are hereby declared subject to all the duties, burdens and obligations, and entitled to the same benefits and privileges which the inhabitants of said union free school district number one bear and enjoy; and the board of education of said union free school district number one shall be and continue, during their respective terms of office, the board of education of such enlarged district, but nothing herein contained shall affect any liability or claim which may have accrued previous to the passage of this act.

§ 2. All acts of the board of education of union free school district number one, done under and by virtue of said act, which is hereby amended, are hereby legalized and confirmed, provided that nothing in this section or act contained, shall authorize or legalize the collection of any tax from the inhabitants of that part of school district number eight under and by virtue of the tax list and warrant made out by said board, for the year eighteen hundred and sixty-six.

Sections two and three of the act of eighteen hundred and sixty-six, authorized the raising of \$10,000 to build a school-house; and permitted the sale of the school-house sites and purchase of a new one.

#### ELBRIDGE.

[*Chap. 43, Laws of 1867, p. 78, vol. 1.*]

SECTION 1. The Jordan academy, in the village of Jordan, is hereby constituted an academical department in free school district number four, in the town of Elbridge, in the county of Onondaga, in the manner provided for that purpose by section twenty-four of title nine of chapter five hundred and fifty-five of the Session Laws of this State, passed May second, eighteen hundred and sixty-four.

§ 2. When such consolidation is effected, said academical department shall be exempt from the operation and effect of section eleven of said title, but shall, in all other respects, be subject to the provisions of said title, except as hereinafter provided.

§ 3. The library and philosophical apparatus then belonging to said academy shall be used for the benefit of said academical department, unless the Regents of the University may otherwise order.

§ 4. The terms of tuition in said academical department shall be fixed by the board of education, at sums not less than four dollars per term of fourteen weeks, and in that proportion for each student or scholar receiving instruction in said department, and which may be collected by action in the corporate name hereinafter mentioned.

§ 5. The board of education may exempt, in whole or in part, from payment for tuition, such indigent persons residing within the bounds of said district as they may think proper.

§ 6. Said academy and district number four, and the board of education thereof, shall be a body corporate, under the name of the Jordan academy and free school.

#### DISTRICT No. 4—EAST CHESTER, WESTCHESTER COUNTY.

[*Laws of 1853, chap. 334, page 723.*]

SECTION 1. School district number four, in the town of East Chester, shall form a permanent school district, and shall not be subject to alteration by the town superintendent of common schools of said town.

§ 2. The said district shall be under the direction of a board, to be styled "The board of education of school district number four, in the town of East Chester," which shall be a corporate body, in relation to all the powers and duties conferred upon them by this act; said board to consist of nine members, five of whom shall constitute a quorum for the transaction of business.

§ 3. The trustees of said district shall, within thirty days after the passage of this act, call a special meeting of the district, for the election of school officers, by giving notice as provided by law. There shall be elected at such meeting three members of said board of education, to serve until the first Monday in October, eighteen hundred and fifty-three; three until the first Monday in October, eighteen hundred and fifty-four; and three until

the first Monday in October, eighteen hundred and fifty-five. There shall also be elected at said meeting a district treasurer, collector, clerk and a librarian, each of whom shall serve until the first Monday in October, eighteen hundred and fifty-three. After said election, the office of school trustee in said district shall be abolished.

§ 4. The annual meeting of the inhabitants of said district shall be held on the first Monday of October in each year.

§ 5. The said board of education may call special meetings of said district whenever they may deem it necessary, or whenever petitioned by twenty-five taxable inhabitants of said district; they shall give notice of the same by posting up a written or printed notice thereof in at least five public places in said district, at least one week previous to the time fixed for such meeting, which notice shall state the time and place of holding such meeting and the purpose for which the same is called; and no business shall be transacted at any such meeting except that stated in the notice calling the same.

§ 6. At the annual meeting of said district, in each year, there shall be elected three members of said board of education, who shall be residents of said district, and shall hold office for three years; there shall also be elected at said meeting a district treasurer, collector, clerk and a librarian, who shall hold office for one year; which election shall be by ballot, and shall be conducted in the same manner as the annual election for town officers. Said board of education shall appoint three inspectors, at least thirty days preceding such election.

§ 7. Every resignation of officers appointed or elected under this act shall be made to the board of education; and such resignation shall have no force or effect, nor in any degree excuse such officer from the discharge of his duties, until the same be accepted and approved by a resolution of said board.

§ 8. Any such officer may be removed from office, for any official misconduct or neglect of official duty, by a resolution of said board, two-thirds of the members thereof concurring; but a written copy of the charges against such officer shall be served upon him, and opportunity shall be given to every such officer to be heard in his defense, before any such resolution shall be adopted.

§ 9. Every person appointed or elected to any office mentioned in this act (and not having refused to accept), who shall neglect to discharge the duties of such office, shall forfeit the sum of twenty dollars to said board of education. It shall be the duty of such board of education forthwith to prosecute for all forfeitures and penalties under this act, and when recovered to apply the same to the purposes of education in said district. All officers mentioned in this act shall be deemed public officers, within the intent and meaning of section thirty-eight of title six of chapter one, part four of the Revised Statutes, and, as such, liable to the penalties therein prescribed, in addition to the penalties in this section.

§ 10. Every officer in this act mentioned, having in his possession, custody, care, charge or control, any property belonging to said district, or any money raised by the provisions of this act or provided by law for the purposes of education in said district, shall, at the expiration of his term, or whenever such officer shall resign, be removed from office, cease to act, or his office be otherwise vacated, transfer all such property and pay over all such money to the board of education.

§ 11. The said board of education shall, at their first annual meeting, choose one of their number for president and one for secretary of said board, who shall hold office for one year. In the absence of the president or secretary at any regular meeting of the board, a president or secretary may be appointed for the time being. The district treasurer and collector shall, within ten days after receiving notice in writing of their election, execute and deliver to the said board of education a bond, in such penalty and with such sureties as the said board may deem necessary, conditioned for the faithful discharge of their respective duties. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and the said board may make appointment to fill such vacancy.

§ 12. The said board of education may make all necessary by-laws for their own government. Vacancies in the board, occurring by resignation or any other cause, may be filled by the board until the next annual election, when such vacancies shall be filled in the same manner as those caused by expiration of term of office.

The said board shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by the secretary or any other member of the board, as often as necessary, by giving personal notice to each member thereof, or causing a written or printed notice to be left at his last place of residence at least twenty-four hours before the hour of meeting; and if any member of the said board refuses or neglects to attend any three successive stated meetings of the board, and if no satisfactory cause of his non-attendance be shown, the board may declare his office vacant.

No member of said board shall receive any pay or compensation for his services.

It shall not be lawful for any member of said board to become a contractor for building or making any improvement or repairs authorized by this act, or be in any manner directly or indirectly interested, either as principal, partner or surety, in any such contract. All contracts made in violation of this provision shall be absolutely void, and the person so violating shall forfeit the sum of fifty dollars.

§ 13. The title to the school-houses, sites, lots, furniture, books, apparatus and appurtenances in this act mentioned, and all other school property in the said district, shall be vested in said board of education; and the same, while used for or appropriated to school purposes, shall be exempt from all taxes and assessments, and shall not be liable to be levied upon and sold by virtue of any warrant or execution. And the said board of education, in its corporate capacity, may take, hold and dispose of any real or personal estate, transferred

to it by gift, grant, bequest or devise, for the use of the common schools in the said district, or any or either of them, or to mortgage or encumber the same for school purposes, with the consent of the district. They shall have and possess, within the said district, all the rights, power and authority of town superintendent of common schools. They shall have the entire control and management of all the common schools within the said district and all the property belonging to the same. They shall require one of the members of said board to visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that the regulations are rigidly adhered to.

§ 14. The board of education shall have entire control and charge of the district school library in said district. They may make such additions to the library and such regulations in relation thereto as they shall deem necessary.

§ 15. The said board of education shall have power and are hereby directed to levy and collect by tax, in each year, upon all the taxable property and inhabitants in said district, as the same shall be assessed by the assessors of the town in which the said district is situated, such sum as shall be authorized by a majority of the voters at any special or annual meeting of the district for the purposes specified in sections sixteen and eighteen; and the said board shall add to their warrant for collection of taxes such amount as they may deem proper for fees for collection, not exceeding five per cent on the amount to be collected. Said board shall have power to make all warrants for the collection of the taxes to be raised by them, returnable at sixty or ninety days, in their discretion, and to renew the same whenever it shall become necessary.

In case it shall appear that the assessment roll does not include all the taxable property of such district, the property omitted shall be assessed by the said board, in the mode required by law, and added thereto.

§ 16. When, in the opinion of the said board, it becomes necessary to build an additional school-house or houses in the district, or to enlarge those already built, they shall submit the plans and estimated cost of such building, and furnishing the same, to the electors of said district at a special meeting called for that purpose; and if a majority of such electors present shall vote in favor of the same, the said board may proceed to carry the same into full effect.

§ 17. Whenever, in the opinion of the board, it may be advisable to sell or exchange any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the district, they shall report the same to the electors of said district at a special meeting called for that purpose, and, with the consent of a majority of the electors present at said meeting, may sell and dispose of such school-houses, lots or sites to the best possible advantage.

§ 18. Said board of education shall have power, and it shall be their duty, out of the funds collected and paid to them, as provided in sections fifteen and twenty-two of this act:

1. To purchase or lease and improve sites for school-houses;
2. To build, purchase, lease, enlarge, alter, improve and repair school-houses, and their out-houses and appurtenances, so as to afford ample accommodation to educate all the children of the said district;
3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages;
4. To procure fuel and defray the contingent expenses of the several schools and of the board of education;
5. To pay the wages of the teachers employed by them;
6. To defray the expenses of insuring all the school property of said district.

§ 19. The public schools in the district shall be free to all children residing in the district, but the board of education may permit children of persons not resident within said district to attend said schools, on such terms as they shall prescribe; the said board may, in the name of said district, sue for and recover of the father or mother, master or mistress, or any person under whose charge such child or children may be, all such sums as shall be so prescribed, with costs of suit.

§ 20. All moneys to be received by virtue of this act, and all moneys by law appropriated to or provided for said district, shall be paid to the treasurer, who, together with the sureties upon the official bond, shall be accountable therefor to said board of education. Said treasurer shall not pay out any of such moneys, except by resolution of said board, and upon an order drawn by the president and certified by the secretary to be so drawn in pursuance of such resolution.

§ 21. The town superintendent of common schools of the town of East Chester shall pay over to the treasurer all the public moneys to which said district number four may be entitled.

§ 22. The said board of education shall prepare and submit, at each annual meeting of the district, an estimate of the amount necessary to be raised for defraying the expenses of the district for the ensuing year, specifying the purposes for which the same is to be expended.

§ 23. The said board of education shall, at the annual district meeting, submit a full report in writing of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge, and the number of scholars attending the same, the studies pursued, the amount of moneys received from the State and from other sources, as well as the amount raised in the district for school purposes, the expenditures of the same, and all the particulars in detail relating to the schools in said district; which report may, if the board think proper, be printed in pamphlet form, or in some newspaper published in the county.

§ 24. All laws and parts of laws inconsistent with this act are hereby repealed, so far as relates to district number four in the town of East Chester.

[*Chap. 217, Laws of 1865, p. 351.*]

PROVIDES FOR A RECEIVER OF TAXES AND ASSESSMENT IN THE TOWN.

§ 9. The offices of collector of the town of East Chester, and of the several school districts therein, after said receiver shall have executed and delivered his bond, as hereinbefore provided, shall cease to exist, and the same are hereby abolished, and all laws and provisions of law applicable to town collectors, and collectors of school districts in said town, not inconsistent with this act, are hereby made applicable to the said office of receiver of taxes hereby created.

§ 10. It shall be the duty of the board of supervisors of said county, and the officers of the several school districts in said town, to issue their warrants to said receiver of taxes in the same manner as warrants are now required by law to be issued to town collectors; and the said receiver of taxes is hereby directed and required, on or before the first day of April in each and every year, to pay over to the treasurer of said county, and to the several persons entitled to receive the same, all moneys remaining in his hands payable to said treasurer, or other persons, and to make a just and proper return of all taxes or assessments remaining uncollected in said town, in the same manner as now required by law, and the treasurer of said county, upon receiving such moneys, the making of such return, and the certificate of the officers of the several school districts, in said town, and of the supervisor thereof, that he has paid the several town officers the moneys they were entitled to receive, shall cancel and discharge the bonds of said receiver, and deliver to him a certificate thereof, which certificate, upon being filed with the county clerk, shall be a full release and discharge of said receiver and his sureties.

ELMIRA.

*Chap. 113, Laws of 1859, p. 297, as amended by chap. 139, Laws of 1864, p. 248, erecting the city of Elmira, and by chap. 95, Laws of 1866, p. 1119, vol. 1.*

Chapter 139, section 14, title 2, Laws of 1864, and title 2, section 1, provides for the election of four commissioners of common schools, to be elected on the first Tuesday in March in each year, and to enter upon their offices on the Monday following. The term of office is one year, and "until their successors shall qualify."

SECTION 1. School districts numbers two, three, five and six of Elmira, and number eleven of Southport, Chemung county, lying principally within the corporate limits of the city of Elmira, are hereby consolidated for the purposes and to the extent in this act specified; and shall, hereafter, for such purposes and to such extent, form but one school district, to be called "The Union school district of Elmira."

§ 2. Said five school districts shall remain and continue separate and distinct, for the purposes and to the extent in this act specified; and shall be called commissioner districts, and numbered as follows: District number two shall form commissioner district number one; district number three shall form commissioner district two; district number eleven of Southport shall form commissioner district number three; district number five shall form commissioner district number four, and district number six shall form commissioner district number five; said districts shall not be subject to alteration except by the Legislature, or by a resolution of the board of education hereinafter created.

§ 3. Ariel S. Thurston, in commissioner district number one; Stephen McDonald, residing in commissioner district number two; Archibald Robertson, residing in commissioner district number three; Civilian Brown, residing in commissioner district number four, and Shubael B. Denton, residing in commissioner district number five, are hereby appointed commissioners in behalf of such districts respectively. The common council of the city of Elmira shall, within fifteen days after the passage of this act, appoint four persons to act as school commissioners in behalf of said "union school district," who shall be residents thereof, and the said persons above named, and the persons appointed by the common council of the said city as commissioners, and their successors to be chosen as hereinafter provided, are hereby constituted a corporate body in relation to all the powers and duties conferred or imposed by law, to be styled "the board of education of the city of Elmira," and are hereby invested with all the powers and charged with all the duties conferred upon them by this act. A majority of commissioners shall constitute a quorum.

§ 4. On the second Tuesday in October, eighteen hundred and sixty-six, there shall be elected in the same manner that trustees of school districts are now elected, by each commissioner district heretofore named, one commissioner (who shall be a resident of such district) to fill the places of those appointed in the preceding section, in behalf of such districts respectively. On the Monday preceding the second Tuesday in October, eighteen hundred and sixty, the common council of the city of Elmira shall in like manner appoint four persons to be school commissioners, to fill the places of those appointed by said common council in behalf of said union district. Annually thereafter, on the day above specified for such election by districts, and appointment by the common council, there shall in like manner be elected five commissioners for the commissioner districts, and two commissioners appointed by the common council of the city for the union district, to fill the places of those whose terms shall next thereafter expire, as hereinafter provided.

§ 5. The commissioners elected as hereinbefore provided shall hold their respective offices for the term of one year from the second Tuesday in October, eighteen hundred and

sixty, and until their successors shall be chosen, and enter upon the discharge of the duties of their offices, respectively. The commissioners appointed on the Monday preceding the second Tuesday in October, eighteen hundred and sixty, by virtue of this act, shall be divided in classes of two each, and they, or a majority of them, shall, within ten days after their appointment, meet in the office of the clerk of the city, and shall determine by lot which of the two persons appointed shall serve for the term of one year and which for the term of two years. The persons so appointed as commissioners shall hold their respective offices for the term of two years (except the first class, which shall hold only for one year), and until their successors shall be appointed and enter upon the discharge of the duties of their offices, respectively. Within ten days after receiving notice of their election or appointment, the commissioners thus chosen shall take the oath of office prescribed by the Constitution of this State, and file the same with the clerk of the village. This act shall not be so construed as to disqualify any commissioner for re-election or re-appointment.

§ 6. The board shall have power, and it shall be their duty, to fill all vacancies in the board of education which may occur from any other cause than the expiration of their term of office. The commissioners so appointed shall hold their offices for the unexpired term of those to supply whose places they are appointed. Any member of said board of education may resign his office by giving ten days' previous notice in writing to the mayor of the city, who may, if he deems the reasons sufficient, accept the same.

§ 7. Any member of the board of education may, for neglect of duty, or other immoral or official misconduct, be removed from office by the common council of the city, by a vote of two-thirds present at any regularly called meeting thereof; but before final action thereon, a written copy of the charges preferred against said member shall be served upon him, and he shall be allowed an opportunity to explain or refute them.

§ 8. At the first meeting of the board of education, and at each annual meeting thereafter, they shall elect one of their number president of the board, and, whenever he shall be absent or unable to act, they shall elect a president pro tempore. At their first meeting the board shall fix the time for their next annual meeting, and unless changed by a resolution of the board the time thus fixed shall be the time for future annual meetings. The board of education shall receive no compensation for their services.

§ 9. The board of education shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or in his absence or inability to act by any member of the board, as often as necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his place of residence at least twenty-four hours before the hour for such special meeting.

§ 10. The board of education shall appoint a secretary and librarian, who shall hold their offices during the pleasure of the board, and whose compensation shall be fixed by the said board; and the same person may hold the office of secretary and librarian. The secretary shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The librarian shall have charge of the library or libraries of the district, and may appoint such assistants as may be necessary from time to time, and such assistants may be removed at any time by the board of education.

§ 11. The record of the board of education, or a transcript thereof certified by the secretary, shall be received in all courts as *prima facie* evidence of the facts therein set forth; and such record, the books, accounts, vouchers and papers of the said board, shall at all times be subject to the inspection of the trustees of the village or any committee thereof.

§ 12. The common council of the city of Elmira shall have power, and it shall be their duty, to raise from time to time, by tax, to be levied upon all the real and personal estate in said union school district, which shall be liable to taxation for town or county charges, such sums as may be determined upon, and certified by the board of education to be necessary and proper, for any or all the following purposes for the current year:

1. To purchase, lease, or improve sites for school-houses.
2. To build, purchase, lease, alter and repair school-houses, out-houses and appurtenances thereunto belonging.
3. To purchase, exchange, improve and repair school apparatus; but the power herein granted shall not be deemed to authorize the furnishing with class or text books any scholar whose parents or guardians shall be able to furnish the same.
4. To procure fuel, and defray the necessary expenses of keeping the school-house in order, exclusive of repairs, including insurance.
5. To defray the contingent expenses of the common schools, and the district library or libraries, including salary of librarian and superintendent.
6. To defray the contingent expenses of the board of education, including the salary of the secretary thereof.
7. To pay teachers' wages, after the application of the public money appropriated by law for that purpose.
8. To pay charges or expenses incurred by law, or necessary to carry this act into effect, or to refund loans contracted by law, and to pay the interest thereon, or to pay such sums as shall be required to fulfill any contract duly made under the provisions of this act.
- § 13. The tax to be levied as aforesaid, and collected by virtue of this act, shall be levied and collected in the same manner and at the same time that other city taxes are, and the powers, duties and liabilities of the collector and his sureties shall be the same in reference to the collection of this tax as for other city taxes, and his jurisdiction shall extend under this act to all the territory embraced in the said union school district.

§ 14. The amount to be raised in any one year for the purchase of sites, erecting and repairing school-houses and the appurtenances, shall not exceed two thousand dollars,

except as herein otherwise provided for. [As amended by section 1, chapter 57, Laws of 1866, p. 95.]

§ 15. All moneys raised pursuant to the provisions of this act, and all school moneys by law appropriated to the treasurer of said city, who, together with the sureties upon his official bond, shall be accountable therefor in the same manner as for other funds of said city, and the board of trustees in fixing the amount of the treasurer's sureties shall include the moneys received by virtue of this act. The said treasurer shall be liable to the same penalties for official misconduct in relation to said money as for any similar misconduct in relation to other moneys of said city.

§ 16. All moneys raised by virtue of this act, or received from any other source, for the use of common, academic or high schools, in buildings therefor, shall be deposited with the treasurer for the safe keeping thereof, to the credit of the board of education, until drawn as hereinafter provided for, and the said treasurer shall keep the account of the funds thus deposited with him separately and distinct from any other funds which he is or may be authorized to receive.

Section 2, chapter 57, Laws of 1866, provides that "section 17 of said act is hereby repealed."

§ 18. The treasurer shall pay out the money received by him by virtue of this act only upon drafts drawn by the president and countersigned by the secretary of the board of education, which draft shall not be drawn except in pursuance of a resolution or resolutions of said board, and shall be made payable to the person or persons entitled to receive the money thereon, and shall state on what account said draft is drawn.

§ 19. The board of education may cause a suit or suits to be prosecuted in the name of the city of Elmira, upon the official bond of the treasurer, or any collector of said city, for any default, delinquency or official misconduct in relation to the collection, safe keeping, and payment of any money in this act mentioned.

§ 20. The said board of education shall have power and it shall be their duty:

1. To organize, establish and maintain such and so many schools, in said union school district, including the common schools now existing therein, and including also any academy or high school, as they shall deem requisite and expedient, and to alter and discontinue the same;

2. To purchase and hire school-houses and rooms, lots or sites for school-houses, and to fence and improve them;

3. Upon such lots and sites owned by said city, to build, enlarge, alter, improve and repair school-houses, out-houses, and appurtenances as they may deem advisable;

4. To purchase, exchange, improve and repair school apparatus, books for indigent pupils, furniture and appendages, and to provide fuel for the schools, pay the necessary insurance on buildings and school property, and to defray contingent expenses of the school library;

5. To have the custody and safe keeping of the school-houses, and all school property belonging to said union district, and to see that the ordinances of the board of trustees in relation thereto be observed;

6. To contract with, examine, license and employ all teachers in said schools, and at their pleasure remove them;

7. To pay the wages of such teachers out of the money appropriated and provided by law for the support of common schools in said union district, or by this act;

8. To defray the necessary contingent expenses of the board, including the annual salary of the secretary of the board, provided the account of the contingent expenses of said board shall first be audited and allowed by the common council;

9. To have in all respects the superintendence, supervision and management of the common schools of said district, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, or the reception of pupils and their transfer from one class to another, or from one school to another, and generally for their good order, prosperity and utility;

10. Whenever, in the opinion of the board of education, it may be advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the corporation, to report the same to the common council;

11. To prepare and report to the common council such ordinances and regulations as may be necessary and proper for the protection, safe keeping, care and preservation of school-houses, lots and all property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations, and annually on or before the first day of June, to determine and certify to the common council the sums in their opinion necessary or proper to be raised, under the twelfth section of this act, for the year commencing on the first day of October thereafter, specifying the amount required for each of the purposes therein mentioned, and the reason therefor.

§ 21. Upon the reception of the report of the board of education, by the common council of the city of Elmira, in relation to the amount of money necessary for school purposes, as directed to be made in preceding section, the common council shall proceed to consider the same, and approve, increase or diminish any or all of said estimates; provided, however, that the aggregate amount shall not fall below a sum sufficient to defray all the necessary expenses for the support of the public schools in the union school district of Elmira, including the academy for the succeeding year. After having fixed the amount to be expended for each and all the purposes mentioned in the last preceding section, the same shall be certified to the board of education, who shall, during such fiscal year, limit the expenditures for such purpose, so that the same shall not exceed the appropriation. [As amended by section 3, chapter 57, Laws of 1866.]

§ 22. Between the first and fifteenth days of October of each year, the board of education shall make and transmit to the school commissioners of Chemung county a report in writing, bearing date the first of October in the year of its transmission, and signed by the president and secretary of the board, and stating:

1. The number of school-houses in said union district, and an account and description of all common schools kept therein, during the preceding year, and the length of time they have severally been taught;

2. The number of children taught in said school respectively, and the number between the ages of four and twenty-one years, residing in said district, on the first day of October in each year;

3. The whole amount of school moneys received by the treasurer of the city during the preceding year, distinguishing the amount received from county treasurer, from the city collector, and from other sources, specifying the same;

4. The manner in which such moneys have been expended, and whether any and what part remains unexpended, and for what cause;

5. The amount of money received for tuition from foreign pupils or any other during the year, and the amount paid for teacher's wages, in addition to the public moneys, with such other information relating to the common schools of said district as may, from time to time, be required by the State Superintendent of Public Instruction.

§ 23. Whenever, in the opinion of the board of education, it shall become advisable to establish a high school or academy in connection with the school system by this act contemplated, and erect a suitable building therefor, they shall report that fact, together with an estimate of its entire cost, with the site, to the common council. The said common council, upon the receipt of such report and estimate, shall cause the question of raising the proposed amount by tax to be submitted to the decision of the tax payers of the union school district, in such manner as they shall deem best calculated to procure a fair expression from said tax payers. All further proceedings in relation to this special school tax by the said common council shall be as directed and set forth in section nine, title five of the village charter, so far as the same will apply to this act, except that if the tax is voted, the restriction in time of three years for reimbursing any loan made as therein stated is hereby removed, and the time left optional with the common council. The provisions of this section shall extend to all amounts required for building school-houses, where the estimated cost exceeds one thousand dollars.

§ 24. The trustees of Elmira academy are hereby authorized and empowered to transfer to the board of education hereby created, either immediately or at a future time, on such conditions as they jointly shall deem most conducive to the cause of education, the right, title and interest in and to all the estate, real and personal, and all bequests belonging to said academy, to be by them used in the purchase of a site, the erection of suitable buildings, the organization of an academic or high school, or for the maintenance of an academy in connection with the general free school system contemplated in this act. The board of education, if they shall deem it necessary, may, with the advice and consent of the common council, organize and maintain primary, secondary or high schools, or either of them in; or cause them to be taught in connection with, the Elmira academy, on such terms and conditions, and for such time, as shall be deemed expedient, by and between said board of education and the trustees of such academy.

§ 25. The academy connected with the school system contemplated by this act, when organized, and when it has complied with the necessary requirements, shall be recognized as one of the academies of this State, subject to the visitation of the Regents, and shall be entitled to participate in the distribution of the income of the literature and other funds in the same manner and upon the same conditions as the other academies of the State; and the Regents of the University of the State of New York, shall pay annually to the board of education of Elmira the distributive share of the said funds to which the said academy shall be entitled.

§ 26. The board of education shall report annually the condition of the union school district of Elmira to the school commissioner of Chemung county, in the same manner and to the same extent as other school districts are by law required to report. The said commissioner, in making apportionment of school moneys, shall designate the amount due said union district separate from other districts in Elmira and Southport, and certify the amount due said district for teachers' wages and library to the treasurer of Chemung county, who shall, upon the draft of the president of the board of education, countersigned by the secretary thereof, pay the sum thus certified as due said union district to the treasurer of the city of Elmira.

§ 27. Each member of the board of education shall visit all the schools in said union school district at least once in each year of his official term; and the said board of education shall provide that each of said schools shall be visited by a committee of their number at least once in each term, who shall report in writing to said board the condition of each school, and make such suggestions as they may deem proper.

§ 28. The schools organized under this act shall be free to all pupils between the age of five and twenty-one years, who are actual residents of the said union school district. The board of education shall decide all questions of residence arising under this section. The said board may allow the children of non-residents to attend the schools of said district, and shall prescribe the rates for the tuition of such non-residents, and also for all pupils over twenty-one years of age. *[As amended by § 4, chapter 57, Laws of 1866.]*

§ 29. The said board of education shall be trustees of the school district libraries of said union district, and all the provisions of law which are now in force, or hereafter may be passed, relative to school district libraries, shall apply to said board of education in the same manner as if they were trustees of a school district. They shall be vested with



the same discretion as to the disposition of moneys appropriated by the laws of this State for the purchase of libraries which is therein conferred on the inhabitants of school districts, and they shall have power to purchase, exchange, repair or dispose of any books or other property of said libraries, or cause it to be done, and apply the proceeds to the purchase of other books or apparatus; also to provide suitable rooms and furniture for said libraries.

§ 30. The title of the school-houses, sites, furniture, books, and all other school property belonging to the districts in this act mentioned, shall be vested in the city of Elmira, and the same, while used or appropriated for school purposes shall not be levied on or sold by virtue of any warrant or execution, nor be subject to taxation for any purpose whatever; and the said village, in its corporate capacity, shall be competent to take, hold and dispose of any real or personal estate transferred to it by grant, gift, bequest or devise, for the use of the common schools or academy of said union school district, whether the same be transferred in terms to said city by its proper style, or by any other designation, or to any person or persons, or corporation, for the use of said schools or academy.

§ 31. The common council may, upon the recommendation of the board of education, sell any of the property, including existing sites held by them by virtue of this act, upon such terms as they shall deem most advantageous; and the proceeds of all such sales shall be paid to the treasurer of the city, and shall be by said board of education expended in the purchase, repair or improvement of school-houses, sites, or appurtenances, furniture or apparatus.

§ 32. It shall be the duty of said board of education, at least fifteen days previous to each annual election for commissioners, to prepare and report to the common council a true and correct statement of the receipts and disbursements under the provisions of this act, during the preceding year, in which account shall be stated under appropriate heads:

1. The moneys raised by the common council under the twelfth section of this act;
2. The school moneys received by the treasurer of the city from the county treasurer;
3. The moneys received by the treasurer of the city from the county treasurer;
4. All other moneys received by the said treasurer, subject to the order of the board of education, specifying the sources from which they shall have been derived;
5. The manner in which such sums of money shall have been expended, specifying the amount under each head of expenditure; and the common council shall, ten days before such election, cause the same to be published in one or more of the newspapers of said city.

§ 33. The common council shall have power, and it shall be their duty, to pass such ordinances and regulations as the board of education may report as necessary for the protection, preservation, safe keeping and care of the school-houses, lots, libraries, and property belonging to or connected with the schools of said union district, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in the act to incorporate said city, and all such penalties, and all others by this act imposed, shall be collected in the same manner that the penalties for violations of the city ordinances are by law collected; and, when collected, shall be paid to the treasurer of the city, to the credit of the board of education, and shall be subject to their order in the same manner as other moneys raised pursuant to the provisions of this act.

§ 34. The various school district offices, in each of the districts herein embraced, shall terminate whenever this act shall take effect, and the board of education shall be chosen and organized, and shall enter upon the duties of their office, except as herein otherwise provided. The trustees and collector in each district shall retain the power now by law vested in such officers, until they, by due diligence, shall have closed up all the unsettled business of their several districts, and discharged all the indebtedness thereof, and for such purpose shall, if necessary, call meetings of the inhabitants of such district, and, when voted at a legally called meeting, shall levy and collect a tax sufficient to liquidate such indebtedness.

§ 35. It shall be the duty of the clerk of the city, immediately after the election or appointment of any person to any office mentioned in this act, personally, or in writing, to notify him of his election or appointment, and any person who, without sufficient cause, shall refuse to serve therein, shall forfeit the sum of ten dollars; and every person so elected or appointed, and not having refused to accept, who shall neglect to discharge the duties of such office, shall forfeit the sum of twenty dollars to said board of education. It shall be the duty of the said board of education forthwith to prosecute for all forfeitures and penalties under this act, when voluntary payment is refused, and when received to apply the same to the purposes of education in said district. All officers mentioned in this act shall be deemed public officers, within the intent and meaning of section thirty-eight, of title six, of chapter one, part four of the Revised Statutes, and, as such, liable to the penalty therein prescribed in addition to the penalty in this section before provided.

§ 36. The board of education shall cause a school or schools for colored children to be taught in said union district, and include the expenses thereof in the amount so to be raised, annually, by tax for contingent expenses, and other purposes of education provided for in this act.

§ 37. The board of education may, when they shall deem it advisable, appoint a superintendent of common schools for the said union school district, who may, ex officio, be secretary of said board. He shall be under the direction of the board of education, and they shall prescribe his general duties. In addition to such other duties as may be devolved upon him by the board, in the visitation and superintendence of the schools, he shall examine the qualifications of teachers, and grant certificates in such manner and form as may be prescribed by the State Superintendent; which shall not be in force longer than a year, and which may at any time be revoked by the board of education. He shall be paid a salary out of the general fund, to be fixed by the board of education, and may be removed from office by the vote of a majority of all the members of the said board.

§ 38. [Repealed by section 2, of title 10, of chapter 139, Laws of 1864.]

§ 39. All acts and parts of acts, conflicting or inconsistent with the provisions of this act, are hereby repealed, so far as they affect this act.

§ 40. This act shall take effect immediately.

[*Chap. 139, Laws of 1864, title 10, section 9, p. 248.*]

§ 9. The act of the legislature of the State of New York, entitled "An act in relation to the common schools in the village of Elmira," passed April 4, 1859, is hereby amended by striking out the word "village," whenever the same appears in said act, and in the title thereof, and inserting the word "city" in place thereof, and also by striking out the words "trustees," and the words "board of trustees," wherever the same appear in said act, and inserting in place thereof the words "common council," and also by striking out the word "president," where the same appears in the sixth section of said act, and inserting in place thereof the word "mayor," and also by striking out the words "the board of trustees of," in the second line of section nineteen of said act. And all the provisions of said act, as so amended, shall apply to and be in force in said city, and in the school district and districts therein, as the same has heretofore applied to and been in force in the village of Elmira.

#### FISHKILL.

[*Chap. 447, Laws of 1867, p. 1062, vol. 1.*]

SECTION 1. The qualified electors of school district number eleven, of the town of Fishkill, are authorized to appoint a building committee of one, who shall receive all moneys raised for the purpose of erecting a school-house in said district, after executing and depositing with the trustees of said district a bond for the faithful discharge of his duties under this act, which bond shall be for a sum equal to twice the amount of any one of the installments hereinafter named, and which shall be signed by at least two sureties, to be approved by said trustees. The said building committee shall have the same power in relation to the building and acceptance of a school-house for said district as is now conferred by law upon the trustees of said school district, and shall receive compensation from the building fund at the rate of three dollars for every day's service, but compensation shall not be allowed to said committee for more than one hundred days' service in the aggregate.

§ 2. The trustees of said school district are hereby authorized and required, in their official capacity, to issue bonds for three-fourths of the amount which shall be voted to be raised for the purpose of building a school-house in said district, said bonds to be of equal amount, and to be payable with interest on the first days of December, in the years eighteen hundred and sixty-seven, eighteen hundred and sixty-eight and eighteen hundred and sixty-nine. Said trustees are hereby directed to issue tax lists and warrants for the collection of district taxes sufficient to cancel said bonds, and the interest due thereon, as they become due as heretofore provided.

§ 3. The plan for said new school-house shall be submitted to a vote of the qualified electors of said district for approval or rejection, and no school-house shall be built in said district until a majority of the legal voters present and voting upon the question at some district meeting duly called for that purpose, shall approve of the plan for the same.

#### FLUSHING, DISTRICT No. 3.

[*Chap. 638, Laws of 1857, vol. 2, p. 431.*]

SECTION 1. School district number three, in the town of Flushing, in the county of Queens, shall form a permanent school district, and shall not be subject to alteration by the school commissioner of the assembly district in which said school district is situated.

§ 2. Said school district shall hereafter be bounded as follows: Commencing in the north boundary of district number five, in the center of the front road leading from Clintonville to Flushing; thence north-westerly in a nearly direct line to the waters of Nostrand's cove, said line passing one hundred yards west of Jacob Wilkins' residence; thence following the waters of said cove to the East river, up the East river and the waters of Little Neck bay to the northern boundary of district number two; thence westerly along said northern boundary to district number five; thence northerly and westerly along said boundary, to the place of beginning.

§ 3. The said district shall be under the direction of a board, to be styled the board of education, which board shall consist of five members, three or more of whom shall constitute a quorum for the transaction of business. Charles A. Roe, Aaron C. Underhill, William H. Schermerhorn, Edwin Powell and Thomas Leggett, jr., shall compose the first board of education, and shall hold their office from one to five years, that is to say, one shall go out of office in each year, and in the order in which their names stand recorded.

§ 4. At the annual meeting of said district in each year, there shall be elected for five years one member of said board of education, who shall be a resident and taxable inhabitant of said district. Said election, and all other elections provided for by this act, except as provided in section fifteen of this act, shall be held by three inspectors, who shall be appointed by the board of education at least thirty days preceding such election, and shall be by ballot, and conducted in the same manner as the annual election.

§ 5. The said board of education may make all necessary by-laws for their government; they shall have the entire control and management of all the common schools within the said district, and of all the property belonging to the same; they shall have and possess,

within said district, all the rights, powers and authority of school commissioners; they may appoint a collector with all the powers and duties of a district collector, or may employ the town collector for that purpose, and such collector shall collect and pay over the school moneys assessed upon said district to the treasurer of the board of education, in the same manner and under the same conditions as the laws of the town of which he is such collector require. They shall appoint two of the members of said board who shall visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that the regulations are rigidly adhered to.

§ 6. The said board of education are hereby authorized and empowered to raise a sum, not exceeding the sum of five thousand dollars, by a tax or loan. Such loan may be secured by a mortgage upon the public school property of said district, to be executed by said board in their official capacity; such money, when loaned, shall be paid over to said board of education, to be applied by them in purchasing a site and erecting or purchasing a school-house for said district, in grading and regulating the grounds, and in building the necessary fences and out-houses.

§ 7. The said board of education are hereby authorized and directed to levy and collect by tax in each year, upon all the taxable property in said district, such sum as may be necessary to pay the interest due on loans, and a part of the principal, to furnish the necessary teachers, books and stationery, to furnish the necessary apparatus for the school-house and rooms, and for such other purposes as they may deem proper. Such tax shall not exceed in amount one-fourth of one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the town of Flushing. And the said board shall add to the amount of any warrant for the collection of taxes such amount as they may deem proper as the collector's fees for collecting, which compensation, however, shall in no case exceed five per cent on the amount of any warrant.

§ 8. The school commissioner of the assembly district in which said school district is situated shall pay over to the treasurer of the board of education all the public moneys to which said district number three shall be entitled for school purposes.

§ 9. The said board of education shall call an annual meeting of the district at such time in the year as they may deem proper. They shall post up written or printed notices of the same in eight or more public places in said district, at least one week previous to such meeting; they shall submit thereto a full report in writing of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge, and the number of scholars attending the same, the studies pursued, the amount of money received from the State, as well as the amount required in the district for school purposes, the expenditure of the same, and generally all the particulars relating to the schools in said district; which report, immediately after it is made, shall be published in at least two newspapers published in Queens county.

§ 10. The board of education shall have entire control and charge of the district school library; they may employ a librarian, make such additions to the library and such regulations in relation thereto as they may deem expedient.

§ 11. Whenever the said board of education shall deem it necessary to erect one or more school-houses in said district, they shall prepare an estimate showing the location proposed, the cost of the ground required, a plan of the building, with the estimated cost of the building and appurtenances, and shall submit the same to the electors of said district at a special meeting called for that purpose, in the same manner as other special meetings are required to be called, and, if a majority of all the electors present vote in favor of the same, then the board may proceed to erect said school-house or houses in the manner proposed by said estimate.

§ 12. The said board of education may call special meetings of said school district whenever they may deem it necessary; notices of a meeting shall be posted in eight or more public places, and published in a county paper at least one week previous to such meeting, and no business shall be transacted at such meeting except that stated in the notice calling the same. Any person entitled to vote at any district meeting shall be an elector or legal voter for all purposes under this act.

§ 13. All laws and parts of laws inconsistent with this act are hereby repealed so far as the same relate to district number three, in the town of Flushing, in the county of Queens.

#### FLUSHING, DISTRICT No. 5.

[Laws of 1848, chap. 81, as amended by chap. 117 of 1849, and 284 of 1854.]

SECTION 1. School district number five, in the town of Flushing, in the county of Queens, shall form a permanent school district, and shall not be subject to alteration by the town superintendent of common schools for the town in which said district is situated.

§ 2. The said district shall be under the direction of a board, to be styled "The board of education," which board shall consist of five members, three or more of whom shall constitute a quorum for the transaction of business; Edingham W. Lawrence, Edward E. Mitchell, Samuel B. Parsons, William H. Fairweather and Thomas Leggett, junior, shall compose the first board of education, and shall hold their offices from one to five years; that is to say, one shall go out of office in each year, and in the order in which their names stand recorded in this section.

§ 3. There shall be elected in each year, in said district, one member of said board of education, who shall be a resident and taxable inhabitant of said district, and shall hold

his office for five years; the said election shall take place at the annual meeting of said district; and the board of education shall appoint three suitable persons as inspectors of said election, and of all other elections provided for by this act, except as provided in section fourteenth of this act, within thirty days next preceding any such election; such elections shall be by ballot, and notice thereof shall be given, the same shall be held and conducted, the votes shall be canvassed and the result of the election determined, in the same manner as in the case of the annual election of other village officers.

§ 4. The board of education may make all necessary by-laws for their government; they shall have the entire control and management of all the common schools within the said district, and all the property belonging to the same; they shall have and possess, within the said district, all the rights, powers and authority of town superintendent of common schools. They may appoint a collector, with all the powers and duties of a district collector, or may employ the town or village collector for that purpose; and such collector shall collect and pay over the school moneys assessed upon said district to the treasurer of the board of education in the same manner and under the same conditions as is imposed by the laws of the town or village of which he is such collector. They shall require two of the members of said board to visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that the regulations are rigidly adhered to.

§ 5. The said board of education are hereby authorized and empowered to raise a sum not exceeding the sum of five thousand dollars, either by a tax on said district or by a loan, such loan to be secured by a mortgage upon the public school property of said district, to be executed by said board in their official capacity.

§ 6. The said board of education, in addition to the other taxes which they are hereby authorized to raise, may levy and collect a sum sufficient to pay interest on loans, as the same becomes due; and whenever any part of the principal of such loans becomes due, they shall levy and collect an amount sufficient to pay the same, which sums, when collected, shall be paid over by said board in discharge of such principal and interest.

§ 7. The said board of education are hereby authorized and directed to levy and collect by tax in each year, upon all the taxable property in said district, such sum as may be necessary, not exceeding in amount one-fourth of one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the town of Flushing. And the said board shall add to the amount of any warrant for the collection of taxes such amount as they shall deem proper, as the collector's fees for collection, which compensation, however, shall in no case exceed five per cent on the amount of any warrant.

§ 8. The town superintendent of common schools of the town of Flushing shall pay over to the treasurer of the board of education all the public moneys to which said district number five shall be entitled for school purposes.

§ 9. The said board of education shall call an annual district meeting at such time in the year as they may think proper, and shall submit thereto a full report in writing of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge, and the number of scholars attending the same, the studies pursued, the amount of moneys received from the State, as well as the amount required in the district for school purposes, and the expenditure of the same, and, generally, all the particulars relating to the schools in said district; which report shall, immediately after it is made, be published in a newspaper published in the town of Flushing, for two weeks, and once in each week.

§ 10. The board of education shall have control and charge of the district school library in said district; they may employ a librarian, make such addition to the library and such regulations in relation thereto as they may deem necessary.

§ 11. The school for the colored children under the charge of the female association in the village of Flushing may, with the consent of said association, be taken under the charge of the board of education and be organized as a district school, and be supported as the other schools in said district are under this act.

§ 12. Whenever the said board of education shall deem it necessary to erect one or more school-houses in said district, they shall prepare an estimate showing the location proposed, the cost of the ground required, a plan of the building, with the estimated cost of the building and appurtenances, and shall submit the same to the electors of said district at a special meeting, to be called for that purpose in the same manner as other special meetings are required to be called, and if a majority of all the electors present at such meeting shall vote in favor of the same, then said board may proceed to erect said school-house or houses in the manner proposed by said estimate; and if the sum authorized to be raised by section five of this act should be insufficient to pay the estimated cost of such buildings and ground, with the expense of grading and regulating the grounds, building the necessary out-houses and fences, with the cost of the necessary books, stationery and necessary apparatus for the school-house and rooms, then the said board of education may raise a sum, in addition to the sum mentioned in section five, and in the manner therein authorized, a sum not exceeding fifteen hundred dollars; and they are also authorized to levy and collect such amount, as may be necessary to pay the principal or interest of such additional sum as may become due, in the same manner as is provided in section sixth of the said act.

§ 13. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same by posting up a written or printed notice thereof, in at least four public places in said village, and by publishing the same in a newspaper published in the village of Flushing, at least one week previous to the time fixed for said meeting, which notice shall state the time and place of such meeting and the purpose for which the same is called; and no business shall be transacted at any such special meeting except that stated in the notice calling the same.

## FLUSHING, DISTRICT No. 7.

[Chap. 50, Laws of 1858, p. 82.]

SECTION 1. School district number seven, in the town of Flushing, in the county of Queens, shall form a permanent school district, and shall not be subject to alteration by the school commissioner of the assembly district in which said school district is situated.

§ 2. Said school district shall hereafter be bounded as follows: Commencing at the south-west corner in the center of the front road leading from the village of Flushing to Clintonville, and north boundary of district number five; thence westerly along the north line of said district number five to the waters of Flushing bay; thence northerly along the waters of said bay to the East river; thence an easterly course along the waters of said river until it comes to Nostrand's cove and the north-west boundary of district number three; and thence along the west boundary of said district number three to the place of beginning.

§ 3. The said district shall be under the direction of a board, to be styled the "board of education," which board shall consist of five members, three or more of whom shall constitute a quorum for the transaction of business. Augustus Drebling, Francis Zoeller, William E. Chisholm, Conrad Pappenhausen, and Herman A. Schleicher shall compose the first board of education, and shall hold that office from one to five years, that is to say: one shall go out of office in each year, and in the order in which their names stand recorded in this section.

§ 4. At the first annual meeting held in said district, and at each annual meeting thereafter, there shall be elected one member of said board of education, who shall hold his office for five years, who shall be a resident and taxable inhabitant of said district. Said election, and all other elections provided for by this act, shall be held by three inspectors, who shall be appointed by the board of education, at least thirty days preceding such election, and shall be by ballot and conducted in the same manner as the annual election.

§ 5. The said board of education shall, at their first annual meeting, choose one of their number for president, one for secretary, and one for treasurer, who shall hold office for one year; the treasurer shall execute a bond conditioned for the faithful performance of his duty, in such form and with such sureties as the said board shall approve, and the said board of education may make all necessary by-laws for their government. They shall have the entire control and management of all the common schools within the said district, and of all the property belonging to the same. They shall have and possess within said district all the rights, and powers, and authority of school commissioners. They may appoint a collector, who shall have all the powers and duties, and shall be subject to all the conditions that district collectors now are, or may employ the town collector for that purpose, and such collector shall collect and pay over the school moneys assessed upon said district to the treasurer of the board of education, in the same manner and under the same conditions as the laws of the town of which he is such collector require. They shall appoint two of the members of said board, who shall visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that the regulations are rigidly adhered to.

§ 6. The said board of education are hereby authorized and empowered to raise a sum, not exceeding the sum of five thousand dollars, either by tax on said district or by a loan, such loan to be secured by a mortgage upon the public school property of said district, to be executed by said board in their official capacity. Such money, when raised by tax or loaned, shall be paid over to said board of education or treasurer thereof, to be applied directly by them in purchasing a site and erecting or purchasing a school-house or school-houses for said district, in grading and regulating the grounds and building the necessary fences and out-houses.

§ 7. The said board of education are hereby authorized and directed to levy and collect by tax in each year, upon all the taxable property in said district, such sums as may be necessary for teachers' wages, to pay the interest due on loans and a part of the principal, to furnish the teachers with necessary books and stationery, to furnish the necessary apparatus for the school-house and rooms, and for such other purposes as they may deem proper. Such tax shall not exceed in amount one-fourth of one per cent on the value of such taxable property as the same shall be assessed by the assessors of the town of Flushing; and the said board shall add to the amount of any warrant for the collection of taxes such amount as they may deem proper as the collector's fees for collecting, which compensation, however, shall in no case exceed five per cent on the amount of any warrant.

§ 8. The supervisor of the town in which said school district is situated, shall pay over to the board of education all the public moneys to which said district number seven is or shall be entitled to for school purposes.

§ 9. The said board of education shall call an annual meeting of the district at such time in the year as they may deem proper. They shall post up written or printed notices of the same in eight or more public places in said district, at least one week previous to said meeting, and shall submit thereto a full report in writing of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge and the number of scholars attending the same, the studies pursued, the amount of moneys received from the State, as well as the amount required in the district for school purposes, and the expenditure of the same, and generally all the particulars relating to the schools in said district, which report shall, immediately after it is made, be published in one or more newspapers published in the village of Flushing.

§ 10. The board of education shall have entire control and charge of the district school library in such district. They may employ a librarian, make such additions to the library, and such regulations in relation thereto as they may deem expedient.

§ 11. Whenever the said board of education shall deem it necessary to erect one or more school-houses in said district, they shall prepare an estimate showing the location proposed, the cost of the ground required, a plan of the building with the estimated cost of building and appurtenances, and shall submit the same to the electors of said district at a special meeting called for that purpose, in the same manner as other special meetings are required to be called; and if a majority of all the electors present vote in favor of the same, the said board may proceed to erect said school-house or school-houses in the manner proposed by said estimate.

§ 12. The said board of education may call special meetings of said school district whenever they may deem it necessary. Notices of a meeting shall be posted in eight or more public places, and published in a county paper at least one week previous to such meeting, and no business shall be transacted at such meeting except that stated in the notice calling the same. Any person entitled to vote at any district meeting shall be an elector or legal voter for all purposes under this act.

§ 13. All laws and parts of laws inconsistent with this act are hereby repealed, so far as the same relate to district number seven, in the town of Flushing, county of Queens.

### FORT COVINGTON.

*Laws of 1853, chap. 155, p. 285.]*

SECTION 1. There shall hereafter be elected in school district number one, formed of school districts numbers one and two, in the town of Fort Covington and county of Franklin, three or five trustees, who shall respectively hold their offices three or five years (as the term of office may be). Preserved Ware, Warren L. Manning, William Hogle, G. A. Streeter, H. B. Mears, and George A. Cheney are hereby appointed trustees of said district, and shall respectively hold said office as follows, namely: The term of office of Preserved Ware and Warren L. Manning shall expire at the same time that the term of office of Henry A. Paddock, a trustee of said district, shall expire; the term of office of William Hogle and G. A. Streeter shall expire, at the same time that the term of office of A. M. Lincoln, a trustee of said district, shall expire; and the term of office of H. B. Mears and George A. Cheney shall expire at the same time that the term of office of Christopher Briggs, as trustee of said district, shall expire.

§ 2. The trustees of said district, and their successors in office, shall constitute a board of education for said district; and, for the purposes of this act, in addition to the present powers and duties of trustees, are hereby constituted a body politic and corporate, by the name and title of "The board of education of the village of Fort Covington;" and said corporation shall have power to establish and organize a classical school in said village, to be known by the name of the "Fort Covington academy;" and such classical school shall be subject to all laws and regulations applicable to other incorporated academies of this State, and shall be entitled to share in the distribution of the moneys of the literature fund, upon the same terms as other academies of this State; and the Regents of the University shall recognize said academy as such, as soon as the required sum of money shall be expended in buildings and competent teachers employed therein.

§ 3. Said board of education shall appoint one of their number president of said board, who shall preside at the meetings of said board, when present: when absent, a president pro tempore shall be appointed in his stead. They shall also appoint one of their number secretary, who shall record all the acts and resolutions of said board; and in the absence of the secretary, a secretary pro tempore shall be appointed to discharge such duties. They shall also appoint a collector, librarian and treasurer of said district, who shall hold their offices (respectively) one year from their appointment, and until others are appointed in their places, unless sooner removed by said board; such collector, librarian and treasurer shall each, within ten days after notice has been received of their appointment in writing, and before entering upon their duties of office, execute and deliver to said board of education a bond, in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and said board of education shall thereupon make an appointment to fill such vacancy.

§ 4. The said board of education shall have power to fill any vacancy which may happen by reason of the death, removal from office, or from the said district, of any of said board; and the officer so appointed shall hold his office for the unexpired term of the person to supply whose place he shall be appointed.

§ 5. Said board of education, or any one of them, may be removed from office for the non-performance of any duty imposed upon them, or any one of them, as set forth in this act, by a two-third vote of the legal voters present of said district, at any annual or special meeting of said district; and the vacancies or vacancy then caused may be filled at such annual or special meeting by a majority of the legal voters then and there present. Notice of annual and special meetings shall be given, in the same manner that annual and special meetings are given in the common school districts of this State.

§ 6. Said board of education shall possess all the powers and be subject to all the duties in respect to said district that the trustees of common schools are now subject to or now possess.

§ 7. The taxable inhabitants of said district, at any annual, special or adjourned meeting legally held, may vote to raise such sum of money as they shall deem expedient for the purpose of purchasing a site and building a school-house in said district, or for the purpose of purchasing any suitable building for such purpose, and direct the trustees to cause the sum

to be levied and raised by installments, and make out a tax for the collection of the same, as often as such installments shall become due; and the legal voters at any such meeting are authorized to fix the compensation for collecting and paying over to the said board of education the amount so levied.

§ 8. The inhabitants of said district shall have no power to rescind the vote to raise such sum of money at any subsequent meeting, unless the same be done within ten days thereafter; nor shall they have power to reduce the amount of the same after the expiration of ten days from the time the tax was first levied, but may remit such sum as shall remain unappropriated after paying for the site and erection of the house or purchase of suitable buildings.

§ 9. The said board of education are hereby authorized to obtain by loan the whole or any part of the money legally voted by said district, and secure the payment of the same by their official bonds.

§ 10. The said board of education are hereby authorized and empowered to sell at public auction, to the highest bidder, the school-houses and sites belonging to said district, by giving public notice, to be posted in ten public places in said district, ten days previous to such sale, towards purchasing a site and erecting a school-house in said district, or to such other purpose as said district shall direct: such sale may be made upon such terms of credit as said board of education shall determine upon, and a bond and mortgage taken by said board for the whole or any part of the purchase money or price for which said site and house may be sold, and such bond and mortgage may be sold and assigned by said board at par, for money to be applied by them as herein provided.

§ 11. The said board of education are hereby authorized and empowered to make such by-laws and regulations as they may deem necessary to secure the prosperity, order and government of said school, and divide the same into primary and higher departments, and regulate the transfer of scholars from one department to the other, and provide suitable instructors for each department, direct what text books shall be used in the same, in carrying out the above provisions of this section; the town superintendent of common schools in said town shall constitute one of said board; said board shall purchase fuel and other necessities for the use of the school or schools in said district, and all contracts made by them in their official capacity shall be binding on them and their successors in office; to fix and regulate the terms of tuition fees in said primary and other higher departments, to sue for and collect in their corporate name any sum of money due to said district, to receive and apply to the uses of said school or schools, or any department thereof, any gift, legacy, bequest, or annuities, given or bequeathed to said board, and apply the same according to the instruction of the said donor or testator; to take and hold any real estate given or bequeathed to said board for the purpose of said school or schools, or any department thereof, and apply the same, or the interest or proceeds thereof, according to the terms and instructions of the donor or testator; to have in all respects the superintendence, supervision, management and control of said schools or any department thereof, except when otherwise provided for in this act) and to hire, pay, and dismiss any teacher or teachers employed by them in said school or any department thereof.

§ 12. Said board of education shall, in all respects, be subject to the restrictions and control of the superintendents of common schools of the town, county and State, in the same manner that the common schools in this State are subject.

§ 13. Said board of education shall have power, and are hereby authorized to receive into said academy, and cause to be instructed therein, any pupil or pupils residing in or out of said district, and to regulate and establish the terms of tuition fees of such resident or non-resident pupils. And said board of education shall have power to regulate the tuition fees and rates of charges in the higher English and classical departments of said academy, and shall have power to make such application of the money raised for the support of common schools in said district, for the payment of teachers' wages, as said board shall determine, and may divide and apportion the same as said board may deem best, to pay the salaries of teachers employed in said academy or the elementary English branches in the schools connected therewith or maintained in said district under their supervision. The rates of tuition in the elementary English branches in the schools maintained in said district shall be subject to the general laws relating to common schools, and after applying such portion of the money received in said district as said board shall determine, to the support of such elementary English department, such sum, not to be less than one-half of all the moneys received in said district for the support of common schools therein, the additional sum required to pay teachers' wages and provide fuel and other contingent expenses necessary to the support of such elementary schools, shall be estimated, assessed, collected and applied in the manner provided in chapter one hundred and forty and four hundred and four of the Session Laws of one thousand eight hundred and forty-nine, or in such other manner as shall be hereafter provided by laws for the support of common schools.

§ 14. All moneys raised in said district for the purpose of said school, and all moneys to be received by such district from the common school fund or other sources, shall be annually paid to the said board of education or to their order, and be applied by them for the uses of said school or schools according to law.

§ 15. The members of said board of education, before receiving any moneys belonging to said district, shall severally execute to the town superintendent of common schools of the town of Fort Covington their separate bonds, with two sufficient sureties, to be approved by said town superintendent, in a penalty at least double the amount to be expended by them for the benefit of said school during the next ensuing year; conditioned, that such trustee giving such bond will faithfully account for the expenditure of all moneys he shall receive for said district and pay over the balance remaining in his hands at the time of the expiration of his office to the other trustees; and the district, at any legal meeting thereof,

may require the penalty of such bond to be increased or additional security to be given by either or all of the trustees, if they shall deem the same insufficient; and any trustee or treasurer of said district, or any member of said board, who shall apply any moneys of said district to his own use, shall be deemed guilty of embezzlement.

§ 16. The trustees and stockholders of "Fort Covington academy" are hereby empowered, by a vote of a majority of its members at any regular meeting, to convey to the board of education hereinbefore named, their buildings, apparatus, books, funds, together with all the appurtenances to the said "Fort Covington academy" belonging.

§ 17. The said board of education shall have the same control over the watering places and military lands on the mile square, in the town of Fort Covington, as the board of trustees of Fort Covington academy has heretofore possessed.

[*Chap. 228, Laws of 1866, p. 517.*]

SECTION 1. The board of education of the village of Fort Covington is hereby authorized to sell and convey that portion of out lot number seven in the mile square in said village, heretofore used as a site for school-house number one in said town, together with the school-house thereon erected, and the commissioners of the land office are hereby required to issue letters patent to the purchaser of said lot.

§ 2. The said board of education is also authorized to sell and convey the site of district school-house number two in said town, and use the proceeds of both the said lots, in the erection of more commodious school-houses.

§ 3. Chapter one hundred and twenty-seven of the Laws of one thousand eight hundred and thirty-two, is hereby amended so as to authorize and empower the said board of education to make selection of a portion of the public square in said village for a site for a new academy and free grade school building or buildings, and to inclose and use such portion of the said public square as they may select and deem proper and necessary for the purposes of the said academy and grade schools.

§ 4. All portions of the acts of eighteen hundred and twenty-one, and eighteen hundred and thirty-two above referred to, inconsistent with the provisions of this act, are hereby repealed.

#### GLEN'S FALLS.

By chapter 424, Laws of 1851, the libraries of districts two, seven, eight, eighteen, nineteen and twenty, in the town of Queensbury, in Warren county, were united into one common library, called the common school library of Glen's Falls, under the charge of three directors, appointed by the trustees of the village of Glen's Falls.

#### HAMILTON.

*Chap. 158, Laws of 1857, p. 357, vol. 1. Chap. 264, Laws of 1861, p. 591. And chap. 401, Laws of 1865, p. 739.*

SECTION 1. The board of education of consolidated school districts numbers one, fourteen and seventeen in the town of Hamilton, shall have power and are authorized, in their discretion, to employ teachers, without reference in their contracts to the moneys which shall be appropriated or subject to their order or drafts during the current year, and nothing contained in the act entitled "An act to provide for the establishment of union free schools," passed June eighteenth, eighteen hundred and fifty-three, shall be construed to prevent said board from exercising said power, and in case of any deficiency of funds for the payment of teachers' wages, beyond the amount of public moneys appropriated and belonging to said consolidated districts, and other moneys, whether appropriated by a vote of said district or arising from the tuition fees of non-resident pupils, or otherwise, the said board shall have power to raise the same by rate bill, to be made out by the said board of education, against those sending to school in proportion to the number of days and children sent, to be determined by the teacher's list; said rate bill to be collected by the collector of said consolidated districts, in the same manner as now provided by law for the collection of school district taxes. In making out such rate bill, it shall be the duty of said board to exempt, either wholly or in part, as they may deem expedient, such indigent inhabitants as may in their judgment be entitled to such exemption; and the amount of such exemption shall be added by them to the first tax list thereafter to be made out by said board for the purposes of said consolidated districts, or shall be separately levied by them as they shall deem most expedient; and for the purposes of levying and directing the collection of any sums so exempted from said rate bill, the said board shall have the same power that trustees of common school districts now possess.

§ 2. The said board of education shall have power to apply the public moneys annually received by them, or subject to their order, for the payment of teachers' wages to the several terms during which school shall be kept in said consolidated districts, in such proportion as they shall deem expedient.

§ 3. The collector appointed by said board shall possess the same power, be entitled to the same fees, and subject to the same liabilities as are now provided by law for collectors of common school districts, not inconsistent with the provisions of the said act of June eighteenth, eighteen hundred and fifty-three.



§ 4. The said board of education in any contract and expenditures for the construction of new school buildings, or for the alteration, repairs or improvements with reference to site of structures in the academy or free school buildings, or in buying apparatus or fixtures, shall have power to make such contracts and expenditures in advance of levying and collection of appropriations then voted and authorized to be raised for such purposes, and may make the same to the full amount of such appropriations so voted, but in no case to exceed the amount thereof, and nothing contained in the said act of June eighteenth, eighteen hundred and fifty-three, shall be construed to prevent said board from exercising such power.

§ 5. The provisions of the first and second sections of this act shall apply only to the departments of said union free school below the academical.

[*Chap. 264, Laws of 1861.*]

SECTION 1. Nothing contained in the act entitled "An act to change the school, and to amend the statute in relation to public instruction," passed April twelfth, eighteen hundred and fifty-eight, shall be so construed as to affect or interfere with the union free school in the town of Hamilton, established in pursuance of the act entitled "An act to provide for the establishment of union free schools," passed June eighteenth, eighteen hundred and fifty-three, or to affect or interfere with any of the officers of said school, or of the districts composing the same; but the said school, the boards of instruction, and the other officers of said districts, shall, in all respects, remain and continue subject to the provisions of said act of June eighteenth, eighteen hundred and fifty-three, and of any special acts heretofore passed in relation to said school, except that sections one and two of said act of April twelfth, eighteen hundred and fifty-eight, shall apply to said union free school and to the districts composing the same.

§ 2. The present board of education of consolidated school districts number one, fourteen and seventeen, in the town of Hamilton, now acting as such, and consisting of nine in number, having been elected wholly in pursuance of the said act of June eighteenth, eighteen hundred and fifty-three, is hereby declared to be the board of education of said consolidated districts; and the acts of said board heretofore done and performed are hereby legalized and confirmed, that is to say, such acts shall not be impeached or held invalid on account of said board having been elected and constituted under and in accordance with the provisions of said act of June eighteenth, eighteen hundred and fifty-three.

§ 3. A majority of the members of said board of education shall constitute a quorum, and shall have power to transact all business and do all acts that said board is legally authorized to perform.

[*Chap. 401, Laws of 1865.*]

SECTION 1. The board of education of consolidated school districts number one, fourteen and seventeen, in the town of Hamilton, shall have power and are authorized, in their discretion, to employ teachers without reference in their contracts to the moneys which shall be appropriated or subject to their order or drafts during the current year; and nothing contained in the act entitled "An act to revise and consolidate the general acts relating to public instruction," passed May second, eighteen hundred and sixty-four, shall be construed to prevent said board from exercising said power, and in case of any deficiency of funds for the payment of teachers' wages, beyond the amount of the public money appropriated and belonging to the said consolidated districts, and other moneys, whether appropriated by a vote of the said districts or arising from the tuition of any non-resident pupil, or otherwise, the said board may raise the same by rate bill, to be made out by the said board of education against those sending to school, in proportion to the number of days and children sent, to be determined by the teacher's list. Said rate bill to be collected by the collector of said consolidated district in the same manner as now provided by law for the collection of school district taxes. In making out such rate bill it shall be the duty of the said board to exempt either wholly or in part, as they may deem expedient, such indigent inhabitants as may in their judgment be entitled to such exemption, and the amount of such exemption shall be added to them by the first tax list, thereafter to be made out by said board for the purpose of said consolidated district, or shall be separately levied by them, as they shall deem most expedient; and for the purpose of levying and directing the collection of any sum so exempt from said rate bill, the said board shall have the same power that trustees of common school districts now possess.

§ 2. The said board of education shall have power to apply the public money annually received by them, or subject to their order for the payment of teachers' wages to the several terms during which school shall be kept in said consolidated districts, in such proportion as they shall deem expedient.

§ 3. The collector appointed by said board shall possess the same powers, be entitled to the same fees, and subject to the same liabilities as are now provided by law for collectors of common school districts, not inconsistent with the provisions of said act of May second, eighteen hundred and sixty-four.

§ 4. The said board of education, in any contract and expenditure for the construction of new school buildings or for the alteration, repairs or improvements with reference to site of structure in the academy or free school buildings, or in buying apparatus or fixtures, shall have power to make such contract and expenditure in advance of the levying and collection of any appropriation voted and authorized to be raised for such purpose, and may make the

same to the full amount of such appropriation so voted, but in no case to exceed the amount thereof; and nothing contained in the said act of May second, eighteen hundred and sixty-four, shall be construed to prevent said board from exercising such power.

§ 5. The said consolidated districts, numbers one, fourteen and seventeen, of the town of Hamilton, shall be known and designated by the name of union free school of Hamilton, and be numbered school district number one of the said town of Hamilton.

§ 6. The provisions of the first and second sections of this act shall apply only to the department of said union free school below the academical.

#### HEMPSTEAD.

[*Chap. 116, Laws of 1863, p. 174.*]

SECTION 1. School district number one in the town of Hempstead, in the county of Queens, shall form a permanent school district, and shall not be subject to alteration by the commissioner of common schools for the district in which it is situated.

§ 2. The boundaries of said district shall remain as at present on the west and south; but shall hereafter, on the east, run from the house of John Petit to the house of Stewart S. Haft, thence to the house of Lewis F. Randall, thence to the house of Jacob Bates, and thence running north to the line dividing the town of North Hempstead, thence along the district school boundary to the place of beginning.

§ 3. The said district shall be under the direction of a board, to be styled "the board of education," which board shall consist of five members, three or more of whom shall constitute a quorum for the transaction of business. John Harold, Wm. M. Carmichael, Richard Brower, Richard Ingraham and A. V. Cortelyou shall compose the first board of education, and shall hold their office from one to five years, that is to say, one shall go out of office in each year, and in the order in which their names stand recorded in this section.

§ 4. The board of education shall fill all vacancies which may happen by death, resignation, or removal from the district; the members so appointed shall hold their office until the next annual meeting, and at each annual election a person shall be elected to supply the place of any member of the board so appointed, and the person thus elected shall serve out the unexpired term.

§ 5. At the annual meeting of said district in each year, there shall be elected one member of said board of education to serve five years, who shall be a resident and taxable inhabitant of said district. Said election, and all other elections provided for by this act, shall be held by three inspectors, who shall be appointed by the board of education, at least thirty days preceding such election; and said election shall be by ballot; and due notice shall be given, by publishing a notice of said election in the village newspapers at least three weeks previous to said election, and shall be conducted in the same manner as the annual election of village officers.

§ 6. The said board of education shall, at their first annual meeting, choose one of their number for president, and one for secretary, and one for treasurer, who shall hold their offices for one year. The treasurer shall execute a bond for the faithful performance of his duties in such form and with such sureties as the said board shall approve, and such bond shall be deposited with the president of said board; the said board may make all necessary by-laws for their government; they shall have the entire control and management of all the common schools within the said district, and all the property belonging to the same; they shall have and possess within the said district all the rights, powers and authority of commissioners of common schools; they may appoint a collector, with all the powers and duties of a district collector, or may employ the town or village collector for that purpose, and such collector shall collect and pay over the school moneys assessed upon said district, to the treasurer of the board of education, in the same manner and under the same conditions as is imposed by the laws of the town or village of which he is collector. They shall require one or more of the members of said board to visit each school in said district at least once in each week, to render such assistance to the teachers, and advice to the pupils, as may be necessary, and see that the regulations are rigidly adhered to.

§ 7. The said board of education are hereby authorized and directed to levy and collect by tax in each year, upon all the taxable property in said district, such sums as may be necessary, not exceeding in amount one-fourth of one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the town of Hempstead, or incorporated village of Hempstead. And the said board shall add to the amount of any warrant for the collection of taxes such amount as they shall deem proper, as collector's fees for collection, which compensation, however, shall in no case exceed five per cent on the amount of any warrant; and on all sums voluntarily paid to the treasurer of the board of education, before the warrant is placed in the collector's hands, only one per cent shall be charged as collector's fees.

§ 8. The supervisor of the town of Hempstead, or any other officer having charge of the same, shall pay over to the treasurer of the board of education all the public moneys to which said district number one shall be entitled for school purposes.

§ 9. The said board of education shall call an annual district meeting at such time in the year as they may think proper, and shall submit thereto a full report in writing of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge, and the number of scholars attending the same, the studies pursued, the amount of moneys received from the State as well as the amount required in the district for school purposes, and the expenditure of the same, and generally all the particulars relating to schools in said district, which report shall, immediately after it is

made, be published in the newspapers published in the village of Hempstead two successive weeks.

§ 10. The board of education shall have control and charge of the district school library in said district; they may employ a librarian, make such additions to the library, and such regulations in relation thereto, as they may deem necessary; but no books shall be loaned to residents out of the district.

§ 11. A school for colored children may be organized as a district school, and be supported as the other schools in said district are under this act.

§ 12. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same by posting up a written or printed notice thereof in at least four public places in said village, and by publishing the same in a newspaper published in the village of Hempstead, at least one week previous to the time fixed for said meeting, and the purpose for which the same is called; and no business shall be transacted at any such special meeting, except that stated in the notice calling the same.

### HOOSICK.

[*Chap. 194, Laws of 1864, p. 384.*]

SECTION 1. The trustees of school district number one in the town of Hoosick, in the county of Rensselaer, shall annually, at least three weeks before their annual meeting, prepare an estimate of the amount which they shall deem necessary to pay the debts of such district, and for the support of common schools therein, for the ensuing year, exclusive of the moneys which they may be entitled to receive from the town supervisor, and including the sums required for the purchase of necessary furniture, apparatus and books, and the contingent expenses; and shall cause printed or written notices thereof to be posted for two weeks thereafter, in five or more of the most public places in said district. They shall present such estimate at such annual meeting, when the inhabitants of such district entitled to vote at school district meetings then present shall vote thereon; and the same having been approved of by a majority of such inhabitants, shall be levied and raised by tax on such district, as now provided by law for raising a district school tax.

§ 2. When the trustees shall have completed the tax list, they shall issue their warrant to the collector of taxes of said district, returnable in thirty days, for the collection of the same, and take from such collector approved security for the performance of his duty; such warrant may be renewed from time to time. The moneys so collected shall be paid to such trustees, and by them appropriated to the purposes for which the same were voted, unless otherwise directed by a vote of the inhabitants at their annual district meeting, or a special meeting called for the purpose.

§ 3. The tax hereby imposed shall be a lien upon the land tax, to be enforced and collected by sale, in the manner that county taxes are, upon a report to be made by said collector to the treasurer of the county of all unpaid taxes in said district.

### HUDSON.

[*Laws of 1841, chap. 350, p. 332, as amended by chap. 12, Laws of 1843, p. 10, and chap. 132, Laws of 1844, p. 122.*]

SECTION 1. The members of the common council of the city of Hudson shall, by virtue of their office, be commissioners for common schools in and for said city, and in common council shall perform all the duties of such commissioners, and shall possess all the rights, powers and authority, and shall be subject to all the duties and obligations of commissioners of common schools in the several towns of this State, and shall have power:

1. To divide the city into school districts, of which there shall not be less than three in the compact part of the city;

2. They shall designate, purchase or lease, or otherwise obtain, in each school district, a site or sites for a school-house or the school-houses therein, and shall fence or improve the same in such manner as to them shall appear suitable and proper;

3. They shall cause to be built or procured in each district such school-house or school-houses and out-houses, as shall appear to them suitable and sufficient;

4. They shall complete, improve, enlarge or repair any district school-house, from time to time, as they shall think proper; and they shall supply the district school-houses, whenever they shall deem it expedient, with such school apparatus, books, furniture and appendages as they may think necessary;

5. They shall appoint, in the manner provided by them for the appointment of other officers of said city, three persons, to be denominated a board of superintendents; of these three persons the one first chosen shall continue in office for three years, the one next appointed shall continue in office for two years, and the one last appointed shall continue in office for one year;

6. They shall have power, and it shall be their duty, to make such by-laws and ordinances as may be in their opinion necessary for the prosperity and good order and efficient government of the common schools, and the security and the preservation of the school-houses and other property belonging to the school districts; and to prescribe the duties and powers of the board of superintendents, in all cases not provided for by this act;

7. They shall require and take from the superintendents and collectors such security as they shall deem expedient; and, if such security is not given by any superintendent or collector, the said common council may declare his office forfeited, and appoint another superintendent or collector in his place;

8. They shall supply a vacancy produced in the board of superintendents from any cause; the person appointed to fill such vacancy shall continue in office during the unexpired remainder of the term for which his predecessor was chosen, and no longer, unless reappointed;

9. They shall divide the district schools in said city into primary and higher departments, or otherwise, whenever they shall deem such division desirable; and they shall prescribe regulations for the transfer of scholars from one department to another, and they shall direct the board of superintendents to provide a sufficient number of suitable instructors for each of these departments.

§ 2. The clerk of said city, by right of office, shall be the clerk of the mayor and aldermen thereof, when acting as commissioners of common schools, and he, as such clerk, shall perform all the duties in reference to said city that the town clerks in the several towns in this State perform as clerks of common schools in such towns, and be subject to the same penalties for the neglect thereof.

§ 3. The board of superintendents of common schools in the city of Hudson shall, in respect to the common schools in said city, possess all the powers and be subject to all the duties and obligations of the inspectors of the common schools in the different towns in this State; it shall carry into effect all the ordinances and orders of the common council in respect to common schools; and it shall be lawful for the said common council to assign to said board any duty required of them in respect to the common schools in said city. The said board shall be under the direction of the common council, and they shall have power, and it shall be their duty:

1. To contract for and superintend the building, enlarging, improving, furnishing and repairing of all school-houses under the charge of said common council, and the making of all repairs and improvements on and around the same;

2. To provide for the safe keeping of the district school-houses in said city;

3. To contract with and employ all the teachers in the several districts therein;

4. To prevent scholars resident in one district from attending a school in another district; and, also, to prevent scholars from going from one school to another in the same district without having, in both the above cases, written permission so to do from the said board;

5. To select such books as they shall deem most suitable to be used as class books in the schools, and to establish an uniformity in all the schools in regard to the books used therein;

6. To visit each school as often as once in each quarter, and to report the condition of the same, with such suggestions for the improvement thereof to the common council as they may deem advisable; which reports shall be published by the common council in two of the city papers;

7. To remove any teacher on manifest neglect of duty, or upon his violating his contract, upon paying such teacher pro rata for the time he has been employed;

8. To pay the wages of all the teachers, by orders on the common council, as commissioners of common schools, so far as the public money in their hands, or the money raised by tax, as to be hereafter provided for, and the money paid over by the collector of the rate bills, shall be sufficient for the purpose;

9. To make out rate bills for the payment of teacher and contingent expenses against the parent or guardian of each scholar, and expense of collection of the same (except those exempted, as hereafter to be provided for), which shall not, however, exceed two dollars per quarter for each scholar, and no bill shall be made out for less time than one quarter, and to annex thereto a warrant for the collection thereof.

§ 4. The said common council of the city of Hudson shall appoint a collector or collectors for the purpose of collecting the rate bills, if any are made out by the board of superintendents; rate bills shall be made out and levied upon the parents or guardians of children sent to the district schools, in the manner provided by law in respect to school districts, except such as shall procure a certificate of inability to pay the same from the aldermen or assistant aldermen of the ward in which such parent or guardian resides.

§ 1. [Act of 1843.] The board of superintendents, appointed or to be appointed under the act hereby amended, are hereby authorized to receive all the moneys intended for the support of common schools in and for the city of Hudson, and to expend the same as provided in said act.

§ 2. [Act of 1843.] It shall be the duty of the treasurer of the county of Columbia, and of the collectors of taxes in and for the city of Hudson, and of the collectors of rate bills, under the provisions of the act hereby amended, to pay over directly to the said board of superintendents all the moneys that may come into the hands of said treasurer and said collectors, respectively, intended for the benefit and support of common schools in said city.

§ 5. The said common council shall be authorized to borrow the sum of five thousand dollars for twenty years, at a rate of interest not exceeding six per cent per annum, for the purpose of procuring suitable school-houses for said city, with such appurtenances and improvements as may be deemed expedient.

§ 6. The comptroller is hereby authorized to loan to the city of Hudson the sum of five thousand dollars, to be paid in twenty equal annual installments, out of any moneys, now or hereafter in the treasury of this State, belonging to the capital of the common school fund, on receiving from the chamberlain, in behalf of the said city, a bond, conditioned from him, as treasurer of said city, and his successor in office, to repay the said sum in twenty equal annual installments, together with the annual interest on said loan from the

time it was made at the rate of six per cent per annum, and which bond said chamberlain is hereby authorized to make and execute.

§ 7. The common council of said city are hereby authorized to raise by tax upon the real and personal property of said city, in the same manner as the general taxes of said city are levied and collected, the annual interest of the above mentioned loan, and to pay over the same in discharge of such interest; and also, in each year in which an installment of the above loan shall become due, to raise, levy and collect, in the same manner, a sum equal to that installment, and to pay over the same in discharge thereof; and the said common council shall also in the same manner raise, levy and collect such sum annually, not exceeding two hundred dollars, as may be necessary for repairs, furniture of said school buildings, and contingent expenses.

§ 8. The common council of the city of Hudson, at their annual meeting in each year, shall cause a sum of money equal to four times the amount of money apportioned to the city of Hudson from the common school fund, together with the collector's fees, to be raised, levied and collected in the same manner that other taxes are raised, levied and collected, and when so raised to be paid to the board of superintendents for the support of common schools in said city.

§ 9. After the year one thousand eight hundred and fifty-three, the common council shall have it in their power to reduce, if they deem it expedient, the above sum to twice the amount apportioned to the city of Hudson from the common school fund, and have recourse to the system of rate bills, as adopted in the several towns in this State, to supply deficiencies.

§ 1. [Act of 1844.] It shall be the duty of the board of superintendents of common schools of the city of Hudson annually hereafter to appoint a librarian for the joint school district library in said city, who shall perform all the duties and be subject to all the restrictions and liabilities now required or imposed upon librarians in the several school districts of the State; and may be removed from office and a successor appointed by said superintendents for any willful neglect of duty, and whenever they shall have reason to apprehend the loss of or injury to any of the books belonging to such library through his misconduct.

§ 2. [Act of 1844.] The common council of said city are hereby authorized and empowered annually to appropriate such sum for the compensation of said librarian as they may deem expedient, not to exceed the sum of fifty dollars, which shall be raised, levied and collected in the manner as other city charges, and when so collected shall be paid over to the superintendents aforesaid, to be by them appropriated as specified in the first section of this act.

§ 10. All the general laws of this State relating to common schools and their officers, except as the same are modified by this act, shall extend to and include the schools established under this act, and the commissioners, inspectors and other officers having charge thereof or in any way connected therewith.

§ 11. All laws relating to the appointment of commissioners and inspectors of common schools in the city of Hudson, and the act entitled "An act to authorize the raising of money for the support of the Lancaster school of the city of Hudson," passed May 11, 1835, and all other acts which conflict with this act, are hereby repealed.

[*Laws of 1854, chap. 179, p. 383.*]

#### TITLE XI.—OF COMMON SCHOOLS.

§ 104. The act entitled "An act in relation to common schools in the city of Hudson," passed May 26, 1841, and the amendments thereto, shall continue in force, except that section eight of said act shall be and hereby is amended, so as to make it the duty of the common council of the city, instead of the supervisors of the county of Columbia, to cause the requisite amount of school moneys to be levied and collected with the tax for city purposes.

#### HUNTINGTON.

[*Chap. 387, Laws of 1857, p. 794, vol. 1.*]

SECTION 1. School districts number three, four and five of Huntington, in the county of Suffolk, are hereby consolidated for the purposes in this act specified, and shall hereafter for such purposes form but one school district, to be called the union school district of Huntington.

§ 2. The said district shall be under the direction of a board to be styled "the board of education," which board shall consist of six members, four or more of whom shall constitute a quorum for the transaction of business. George A. Scudder, Brewster Conklin, Smith Woodhull, Brewster Skidmore, Richard B. Post and George W. Conklin, shall compose the first board of education, who shall be divided into three equal classes, each class containing two members, and shall determine by lot their respective terms of office, so that the first class shall serve to the first annual meeting ensuing; the second one year and the third two years from said meeting.

§ 3. At the annual meeting of said district, to be held on the first Monday in January in each year, there shall be elected for three years, two members of said board of education, who shall be residents and taxable inhabitants of said district, as also a clerk, librarian and collector, for one year; and in case of a vacancy of any office in said board or other office of the district, occasioned by the death of such officer, his refusal to serve, removal out of the district or any cause other than the expiration of the term of office of persons elected, said board of education may make an appointment to fill such vacancy until the next annual meeting.

§ 4. Said board of education shall possess all the powers and be subject to all the duties in respect to said district that the trustees of common schools now possess, and such other powers and duties as are given or imposed by this act.

§ 5. The legal voters of said district, at any annual, special or adjourned meeting, legally held, may vote to raise such sum of money as they shall deem expedient, for the purpose of purchasing a site and building a school-house in said district, or for the purpose of purchasing any suitable building and site for such purpose, to erect suitable out-buildings, to inclose the same with a suitable fence and for such other improvements as may be considered necessary, and also direct the board of education to cause the same to be levied by installments, and make out a tax list for the collection of the same, as often as such installments shall become due; and the said board of education are hereby authorized to obtain by loan the whole or any part of the money legally voted by said district, and secure the payment of the same by their official bond as representatives of said district, as also to collect by tax from said district a sum sufficient to pay interest on said loans.

§ 6. The said board of education are hereby authorized and empowered to make such by-laws and regulations as they may deem necessary to secure the prosperity, order and government of said school, and divide the same into primary and higher departments, and regulate the transfer of scholars from one department to the other, and provide suitable instructors for each department, direct what text books shall be used in the same, purchase fuel and other necessities for the use of the school or schools in said district; and all contracts made by them in their official capacity shall be binding upon them and their successors in office; to fix and regulate the terms of tuition fees in said primary and other higher branches in said school or schools, to sue for and collect in their corporate name any sum of money due to said district, to receive and apply to the uses of said school or schools, or any department thereof, any gift, legacy, bequest or annuities, given or bequeathed to said district for the purposes of said school or schools, and apply the same, or the interest or proceeds thereof, according to the terms and instructions of the donor or testator; to have in all respects the superintendence, supervision, management and control of said school or schools, and to hire, pay and discharge any teacher employed by them in said schools.

§ 7. Said board of education shall in all respects be subject to the restriction and control of the commissioner of common schools for the district in the same manner as the common schools in this State are subject.

§ 8. Every person elected or appointed to any office mentioned in this act who, without sufficient cause, shall refuse to serve therein, shall forfeit the sum of ten dollars, and every person so elected or appointed, and not having refused to accept, who shall neglect to discharge the duties of such office, shall forfeit the sum of twenty dollars to said board of education. It shall be the duty of said board forthwith to prosecute for all forfeitures and penalties under this act, and when recovered to apply the same to the purposes of education in said district.

§ 9. The trustees of said districts numbers three, four and five, holding office at the time of the passing of this act, shall, as soon as it can be done conveniently, sell, at public auction or private sale, as they shall deem expedient, the district property in their respective districts, and after paying the just debts of the respective districts, apportion the balance so received from each district among the taxable inhabitants thereof in the ratio of their several assessments upon the last assessment roll of the town.

#### ISLIP.

[*Chap. 455, Laws of 1865, p. 820.*]

SECTION 1. School district number twelve, in the town of Islip, in the county of Suffolk, shall form a union free school district.

§ 2. The said district shall be under the direction of a board to be styled "the board of education," such board to consist of three members, two of whom shall constitute a quorum for the transaction of business. Robert W. Pearsall, Stephen Sharp and William Metcalf shall compose the first board of education, and shall hold their office from one to three years, from the second Tuesday in October next, that is to say, one shall go out of office in each year, and in the inverse order in which their names stand recorded in this section.

§ 3. At the annual meeting held in said district in eighteen hundred and sixty-six, and at each annual meeting thereafter, there shall be elected one member of said board of education, who shall hold his office for the term of three years, and who shall be a resident and tax payer in said district.

§ 4. The said board of education shall, at their first meeting, choose one of their number president, and one clerk, and one treasurer, who shall hold office until the annual meeting of said board. The said board of education shall also appoint one of the taxable inhabitants of their district collector of the moneys raised and to be raised within the same for school purposes, who shall hold such appointment during the pleasure of the board. The said treasurer and collector shall each execute a bond conditioned for the faithful performance of his duties and with such sureties as the board shall approve.

§ 5. The said board of education may make such by-laws as they may deem necessary for their own government; they shall have the entire control and management of all the common schools within their said district, and all property belonging to the same; they shall require one of the members of said board to visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that the rules and regulations are strictly enforced. And the said board of education shall have the power to take by purchase or by devise, and to hold any real and personal

estate necessary for the purposes of this act, and also to sell and convey the school-house or school-houses and site or sites situated in their district, and to execute and deliver good and valid conveyances therefor when authorized by a majority of votes of the tax payers of the said district present at a special meeting called for that purpose.

§ 6. Said board of education shall have the power, and are hereby directed, to levy and collect by tax once in each year upon all the taxable property and inhabitants in said district, as the same shall have been last assessed by the town assessors of the town in which said district is situated, such sums as said board shall estimate to be necessary for the following purposes:

1. To pay teachers' wages;

2. To alter, repair and improve the school-houses belonging to said district and their appurtenances;

3. To hire sites, school-houses and rooms for the use of said school district when necessary;

4. To insure the school-houses and property belonging to said district;

5. To pay all necessary contingent expenses of said school district and board of education.

§ 7. All moneys belonging to the said district shall be deposited in a bank or trust company to be designated by the board of education. No moneys shall be paid out, except by direction of said board, and upon the order of the president, countersigned by the secretary.

§ 8. Whenever said board of education shall deem it necessary to erect one or more school-houses in said district or to enlarge that or those already built, they shall submit the plans and estimated cost of such buildings, and of furnishing the same, to the voters of the said district, at an annual meeting or at a special meeting called for that purpose; and if a majority of such voters present shall vote in favor of the same, the said board may proceed to carry the said improvements into full effect.

§ 9. The said board of education, in addition to the other taxes which they are authorized to raise by this act, may levy and collect a sum sufficient to pay interest on loans as the same becomes due; and whenever any part of the principal of said loans becomes due, they shall levy and collect an amount sufficient to pay the same, which sums, when collected, shall be paid over by said board in discharge of such principal and interest; and the said board shall add to the amount of any warrant for the collection of taxes such amount as they shall deem proper as the collector's fees for collection, which compensation, however, shall in no case exceed five per cent on the amount of any warrant.

§ 10. The public schools in the district shall be free to all the children residing in the district; and the said board of education may permit persons not residents within the said district to attend such schools on such terms as they shall prescribe; and the said board may, in their corporate name, and for the benefit of the said district, sue for and recover of the father or mother, master or mistress, or any person under whose charge such non-resident child or children may be, all such sums as shall be so prescribed, with costs of suit.

§ 11. The supervisor of the town of Ithaca, or such other officer as may be authorized to receive the school moneys from the county treasurer for said town, shall pay over to the treasurer of the said district all the public moneys in his hands apportioned to the said district number twelve.

§ 12. The collector of this school district shall, in the collection of any tax authorized by this act, proceed in the same manner and have all the powers which collectors of town and county taxes now possess.

§ 13. The said board of education shall submit a full report in writing, at the annual meeting of said district, of their doings as such board, and they shall state therein the number attending their schools; how many white children and how many colored; the condition of schools in said district under their charge and the number thereof; the studies pursued; the amount of money received from the State and other sources, as well as the amount raised in the district for school purposes, and the expenditures of the same, and generally all the particulars relating to schools in the district.

§ 14. The board of education shall have control and charge of the district school library in said district. They may employ a librarian, make such additions to the library and such regulations therefor as they shall deem necessary.

§ 15. A school for colored children may be organized by said board, and be supported in the same manner as other schools shall be supported under and by virtue of this act.

§ 16. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same by posting up a written or printed notice thereof in at least six public places in said district, and by publishing the same in the newspapers published in said district at least one week previous to the time fixed for such meeting, and state the purpose for which the same is called; and no business shall be transacted at any such special meeting except that stated in the notice calling the same.

§ 17. In all respects, except as expressly provided otherwise by this act, the said district shall be held and regarded as organized under and subject to the provisions of title nine, chapter five hundred and fifty-five, of the Laws of eighteen hundred and sixty-four, and the amendments thereto that are or may hereafter be made.

## ITHACA.

[*Chap. 60, Laws of 1861, p. 87.*]

SECTION 1. School district number sixteen in the town of Ithaca, in the county of Tompkins, shall form a permanent school district, and shall not be subject to alteration by the school commissioner of said county.

§ 2. The schools in said district shall be free to all the children residing therein between the ages of four and twenty-one years, and no rate bill shall hereafter be imposed.

§ 3. Trustees for said school district shall continue to be elected for the same time, and in the same manner, as is now provided by the general school laws of this State. The trustees shall have the control and management of all the district schools within the said district, and all the property belonging to the same. They shall appoint a collector, who shall have all the powers, and perform all the duties, of a school district collector, as now provided by the general school laws of this State, and who shall give bonds with sureties satisfactory to the trustees for the faithful performance of his duties before he shall be permitted to enter upon the discharge thereof, that he will pay over to said trustees upon demand, or upon their written order, all moneys which he shall have collected and belonging to said district.

§ 4. The trustees shall submit at the annual meetings of said district, which shall be held as now provided by law, on the second Tuesday of October of each and every year, a full report in writing of their official doings, and shall state therein the number and condition of the schools in said district under their charge, the amount of all moneys received and expended, the source from whence received, and the purposes for which expended. They shall also prepare and present at such annual meeting a statement of the amount of money which they shall deem necessary to pay any debts of said district, and for the support of schools therein, for the ensuing year, exclusive of the money which they may be entitled to receive from the supervisor of the town, and including the sum of money required for the purchase of necessary furniture, apparatus, books, and for library and contingent expenses. They shall present such statement at such annual meeting, when the inhabitants of said district entitled to vote at school district meetings then present shall vote thereon, and the same having been approved by a majority of such voters, shall be levied and collected by tax on the taxable property as now provided by law.

§ 5. The trustees of said district shall have control and charge of the district library in said district: they shall appoint a librarian, make such additions to the library, and such regulations in relation thereto as they shall deem necessary; but such regulations shall in no wise impair or conflict with the general regulations which are or may be prescribed, by the Superintendent of Public Instruction.

§ 6. The trustees shall have power to suspend from school, for such length of time as they may think proper, those pupils whose bodily condition, irregularity in attendance, habitual truancy, or insubordination, shall, in their judgment, prove injurious to the best interests of the schools.

§ 7. A special school meeting of said district may be called and held by the trustees, inserting a notice of the time, place and object of such meeting once a week for two successive weeks in two of the village newspapers published within said district.

§ 8. All laws and parts of laws inconsistent with this act are hereby repealed, so far as the same relate to district number sixteen in the town of Ithaca. And all school laws in force on the first day of January, eighteen hundred and sixty-one, shall by virtue of this act, remain in force so far as the same relate to said district, and are not repealed by the provisions of this act.

#### JAMAICA.

[*Chap. 533, Laws of 1853, p. 997.*]

SECTION 1. The village of Jamaica, in the town of Jamaica, in the county of Queens, shall form a permanent school district, and shall not be subject to alteration by the town superintendent of common schools for the town of Jamaica.

§ 2. The said district shall be under the direction of a board, to be styled "the board of education." Such board shall consist of five members, three of whom shall constitute a quorum for the transaction of business. Gasper Phraner, Piermont Potter, John A. King, John D. Shelton and Latham M. Jaggard shall compose the first board of education, and shall hold their office from one to five years; that is to say, one shall go out of office in each year, and in the order in which their names shall stand recorded in this section.

§ 3. At the first annual meeting in said district, and at each annual meeting thereafter, there shall be elected one member of said board of education, who shall hold his office for the term of five years; also a district collector, both of whom shall be residents and tax payers in said district; and said collector shall collect and pay over the school moneys assessed upon said district to the treasurer of the board of education, in the same manner and upon the same conditions as the town collector. And the board of education shall appoint three suitable persons as inspectors of said election, and of all other elections, as provided by this act, within thirty days next preceding any such election. Such election shall be by ballot; and notice thereof shall be given, the same shall be held and conducted, the votes shall be canvassed, and the result of the election shall be determined in the same manner as for village officers.

§ 4. The said board of education shall, at their first annual meeting, choose one of their number for president, one for secretary, and one for treasurer, who shall hold office for one year. The treasurer shall execute a bond conditioned for the faithful performance of his duties, in such form and with such sureties as the said board shall approve. An election for said officers shall be held thereafter on the same day of the same week of the same month on which the first election was held. If from any cause the election shall not take place on the day appointed, it shall be held within one week thereafter. Until such election the old officers shall continue to perform their respective functions.



§ 5. The said board of education may make such by-laws as they may deem necessary for their own government; they shall have the entire control and management of all the common schools within their said district, and all the property belonging to the same; they shall have and possess, within the said district, all the rights, powers and authority of town superintendent of common schools. They shall require one of the members of said board to visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that the rules and regulations are strictly enforced. And the said board of education shall have the power to take by purchase and devise, and to hold any real and personal estate necessary for the purposes of this act, and also to sell and convey the school-houses and sites now situated in said district, and to execute and deliver good and valid conveyances therefor.

§ 6. All moneys belonging to the said district shall be deposited in a bank or trust company, to be designated by the board of education, or loaned out on interest upon ample security, under the direction of the board. No money shall be paid out, or securities changed, except under the direction of the board of education, and then by order of the president, countersigned by the secretary.

§ 7. Whenever the said board of education shall deem it necessary to erect one or more school-houses in said district, and before they shall proceed to raise any money, as provided for in section eight, they shall prepare an estimate, showing the location proposed, the cost of ground, a plan of the building, with the estimated cost of construction, and shall submit the same to the electors of said district, at a special meeting to be called for that purpose, in the same manner as other special meetings are required to be called, and if a majority of all the electors present shall vote in favor of the same, then said board may proceed to erect said school-house or houses in the manner proposed by said estimate; and if the sum authorized to be raised by section eight of this act should be insufficient to pay the estimated cost of such erection or erections, and premises, with the expenses of grading and regulating the grounds, building the necessary out-houses and fences, with the cost of necessary books, stationery and appurtenances for the school-house or houses and rooms, then the said board of education may raise, in addition to the sum mentioned in section eight of this act, and in the manner therein authorized, a sum not exceeding one thousand dollars; and they are also authorized to levy and collect such amount as may be necessary to pay the principal or interest of such additional sum or sums, as the same may become due, in the manner provided by section nine of this act.

§ 8. The said board of education are hereby authorized and empowered to raise a sum not exceeding five thousand dollars for the purpose of erecting a school-house or houses in said district, either by tax on such district or a loan, to be secured by a mortgage upon the public school property of said district, to be executed by said board in their official capacity, signed by the president and secretary, or by the issue of certificates of loan, in sums of not less than one hundred dollars, the said certificates to be signed by the president of said board, and to be a lien upon the school district property. The Comptroller of the State of New York is hereby authorized to loan to said district any moneys in the treasury belonging to the capital of the common school fund as is authorized by this section to be borrowed.

§ 9. The said board of education, in addition to the other taxes which they are authorized to raise by this act, may levy and collect a sum sufficient to pay interest on loans as the same becomes due, and whenever any part of the principal of such loans becomes due, they shall levy and collect an amount sufficient to pay the same, which sums, when collected, shall be paid over by said board in discharge of such principal and interest.

§ 10. The said board of education are hereby authorized and directed to levy and collect by tax, in each year, such sum as may be necessary, upon all the taxable property in such district, not exceeding in amount one-fourth of one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the town of Jamaica, and the said board shall add to the amount of any warrant for the collection of taxes such amount as they shall deem proper as the collector's fees for collection, which compensation, however, shall in no case exceed five per cent on the amount of any warrant. [As amended by chapter 867, Laws of 1867, vol. 2, p. 2179.]

§ 11. The town superintendent of common schools of the town of Jamaica shall pay over to the treasurer of the board of education all the public moneys to which said district shall be entitled for school purposes.

§ 12. The said board of education shall call an annual district meeting at such time in the year as they may think proper, by giving the notice now required by law for annual meetings in school districts, and at such meeting they shall submit thereto a full report, in writing, of their doings at such board; and they shall state therein the number of children residing in the said district for whom public money is drawn, how many white children and how many colored; they shall also state the number and condition of the schools in said district under their charge, and the number of pupils attending the same, the studies pursued, the amount of moneys received from the State or other sources, as well as the amount raised in the district for school purposes, and the expenditure of the same, and generally all the particulars relating to the schools in said district.

§ 13. The board of education shall have control and charge of the district school library in said district; they may employ a librarian, make such additions to the library, and such regulations therefor as they shall deem necessary.

§ 14. A school for colored children may be organized by said board, and be supported in the same manner as other schools shall be supported, under and by virtue of this act.

§ 15. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same by posting up a written or printed notice thereof, in at least six public places in said district, and by publishing the same in the newspapers published in said district, at least one week previous to the time

fixed for such meeting, which notice shall state the time and place of such meeting, and the purpose for which the same is called; and no business shall be transacted at any such special meeting except that stated in the notice calling the same.

§ 16. All laws and parts of laws inconsistent with this act are hereby repealed, so far as they relate to the village of Jamaica.

## KINGSTON.

[*Chap. 350, Laws of 1863, p. 594, as amended by chap. 40, Laws of 1864, p. 65.*]

SECTION 1. From and after the last Monday in May, eighteen hundred and sixty-three, school districts numbers five, eight, eleven and fifteen of the town of Kingston, county of Ulster, are hereby consolidated for the purposes and to the extent in this act specified, and shall hereafter, for such purposes and to such extent, form but one school district, to be called "The Kingston school district."

§ 2. Said school districts, numbers five, eight, eleven and fifteen shall remain and continue separate and distinct for the purposes and to the extent in this act specified, and shall be called "primary school districts," and shall not be subject to alteration except by resolution of the board of education hereinafter created. The school-houses in said primary districts shall be used for the instruction of the children residing in said districts, entitled to attend common schools, and when such children shall arrive at sufficient age and proficiency in learning they may be transferred, upon the proper testimonials, into the more advanced departments created and authorized by this act, the age, qualifications and testimonials to be prescribed by the laws, rules and regulations of the board of education hereinafter created.

§ 3. Abram Wood, residing in primary district number five, and whose term of office shall expire on the first Monday of January, eighteen hundred and sixty-five; Edwin W. Budington, residing in primary district number eight, and whose term of office shall expire on the first Monday of January, eighteen hundred and sixty-six; John W. Kerr, residing in primary district number eleven, and whose term of office shall expire on the first Monday of January, eighteen hundred and sixty-seven, and Isaac Denike, residing in primary district number fifteen, and whose term of office shall expire on the first Monday of January, eighteen hundred and sixty-eight, are hereby appointed trustees in and for said temporary school districts respectively; and Charles W. Shaffer and Henry H. Reynolds, whose terms of office shall expire on the first Monday of January, eighteen hundred and sixty-five; William C. Hale and George Southwick, whose terms of office shall expire on the first Monday of January, eighteen hundred and sixty-six; and Marius Schoonmaker and Solomon Hommel, whose terms of office shall expire on the first Monday of January, eighteen hundred and sixty-seven, are hereby appointed trustees for and in behalf of said Kingston school district.

§ 4. Whenever the term of office of trustees of any of the said primary school districts expires on the first Monday of January in any year, there shall be elected in and for the said primary school districts, on the first Monday of December preceding, in the manner that trustees of school districts are elected, one trustee who shall be a resident of said primary school district and who shall hold his office for three years. There shall also be elected in said primary school district, at the time of electing trustee, a clerk who shall hold his office for three years. Within ten days after such election the clerk of said primary school district shall certify to the board of education hereinafter created the names of the officers so elected.

§ 5. On the second Monday in December in each year, after the present year, there shall be elected in the same manner that trustees of school districts are elected, two trustees in and for the said Kingston school district, who shall hold their office for three years from the first Monday of January following. Every officer appointed or elected under the provisions of this act shall hold his office until his successor is elected or appointed and enters upon the discharge of the duties of his office.

§ 6. Notices of elections and all other meetings of said districts shall be given by said board of education hereinafter created, at least ten days before such election or meeting, by publishing notice in one or more of the newspapers published in the said Kingston school district, and by posting the same on the outer door of the school-house or houses in the district in and for which such election or meeting is to be held, and not less than five other public places in said district.

§ 7. In case of vacancy of any office of trustee mentioned in this act, occasioned by the death of such officer, his refusal to serve, removal out of the district for which he was appointed or elected, his incapacity, or any other cause, other than the expiration of the term of office of persons so elected, said board of education may make an appointment to fill such vacancy. The officer so appointed shall hold his office for the unexpired term of the person to supply whose place he shall be so appointed.

§ 8. Any trustee or other officer of the said Kingston school district may be removed from office for official misconduct by a vote of two-thirds of the members of the board of education hereinafter created; but a written copy of the charges preferred against him shall be served upon him at least ten days before the time appointed for a hearing of the same, and he shall be allowed a full and fair opportunity of refuting such charges before such removal.

§ 9. The said trustees of the said Kingston and primary school districts, and their successors to be chosen as provided in this act, shall constitute a board, to be styled the "Kingston board of education," which shall be a body corporate, with all the general powers of a corporation under the Revised Statutes. The first meeting of the board shall be held in the said village of Kingston on the last Wednesday of May, eighteen hundred and sixty-three, and the annual meeting of said board shall be held on the last Wednesday of April in each year. At the first meeting of the board, and annually thereafter at the annual meeting, they

shall elect one of their number president of the board, and whenever he shall be absent a president pro tempore shall be appointed. The members of the said board shall not receive any compensation for their services; neither shall they be interested directly or indirectly in any contract for improvements or repairs, which may be made by said board.

The said board shall meet for the transaction of business as often as once in every three months, and may adjourn for a shorter period. Special meetings may be called by the president, or in his absence or on his refusal or inability to act, by a majority of the members of the board, as often as necessary, by giving personal notice to each member of the board, or by causing a written or printed notice to be left at his place of residence at least twenty-four hours before the time for such special meeting.

\*§ 11. The said board shall appoint a secretary, who shall be a taxable inhabitant of said district, and who shall hold his office during the pleasure of the board. The said secretary shall attend the meetings of said board, and make and keep a record of the proceedings thereof in a book to be provided by the board for that purpose, and shall perform such other duties as the board may require.

§ 12. The said board shall have power, and it shall be their duty, to appoint a treasurer and collector for the said "Kingston school district," who shall be a taxable inhabitant of said district, and who shall severally hold their appointments for one year and until others are appointed in their stead, unless sooner removed by the board for cause, and only one such appointment shall be held by the same individual at the same time. Such treasurer and collector shall severally and within ten days after notice in writing of their appointment, and before entering upon the duties of their office, execute and deliver to said board of education, a bond in such penalty and with such sureties as the board may approve, conditioned for the faithful discharge of the duties of their respective offices, and that they will well and truly account for and pay over on demand to said board of education all moneys which they may receive as such officers.

§ 13. The said board of education shall have power, and it shall be their duty, to raise, from time to time, by tax, to be levied upon all the real and personal estate in said Kingston school district, which shall be liable to taxes for the ordinary county and town charges, in like manner as county and town charges and taxes are levied and raised, such sums as they may determine to be necessary and proper for the payment of the salaries of the superintendent and teachers in the public schools under their charge, repairs of school-houses, fences, out-buildings and grounds belonging thereto, and all other necessary and contingent expenses for establishing and maintaining the said public schools, and the necessary and contingent expenses of the board of education. And they may also raise such additional sum, not exceeding five thousand dollars in any one year, as the taxable inhabitants of said Kingston school district may, at any meeting regularly called, authorize or direct for the purchase of school-houses, lots or sites for school-houses, and to defray the expenses of the erection, altering and improving school-houses, out-houses, and their appurtenances, or for such other purposes as are included within the powers and duties of the board of education as hereinafter mentioned. [*As amended by § 1, chapter 40, Laws of 1864, p. 65.*]

§ 14. For the purpose of collecting any tax or taxes voted to be raised or levied by said board of education, such board shall make out, or cause to be made out, a tax list in the manner by law provided in cases of school district taxes, and shall issue their warrant in like manner for the collection thereof, and shall deliver the same to the collector, which warrant may be renewed from time to time by said board in their discretion. The collector, upon receiving such warrant, shall immediately proceed to collect the taxes directed thereby to be collected; and in making such collections shall proceed in the same manner, possess the same powers, and be entitled to the same fees, as collectors of taxes in school districts.

§ 15. All moneys raised or to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to or provided for said Kingston school district, whether from the common schools or literature fund, or under "An act to establish free schools throughout the State," or otherwise, shall be paid to the treasurer appointed by said board. The said treasurer shall be liable to the same penalty for official misconduct in relation to the said moneys as the treasurer of the village of Kingston would be for any similar misconduct in relation to moneys of said village.

§ 16. All moneys raised by virtue of this act, or received by said Kingston school district, for the use of the public schools therein, shall be deposited for safe keeping with the treasurer appointed by said board, and the said treasurer shall keep all the funds which may come to his hands, separate and distinct from all other moneys, and any violation of this section shall be deemed a misdemeanor and punished accordingly.

§ 17. The treasurer shall be furnished by the board of education with necessary books in which to enter and keep his official accounts; and he shall keep a true account of all the moneys received and disbursed by him, and of the parties from whom received, and to whom and for what purpose paid out. He shall also keep an account with every teacher or other person employed by the board of education, and every officer of the district who shall receive any pay or compensation; and shall make reports to the board whenever required by them. The drafts drawn on the treasurer shall be numbered consecutively, and the treasurer in any question of priority of payment shall pay all such drafts in the order of their respective numbers, unless otherwise specially directed by the board of education. The books of the treasurer, and also the records of the proceedings of the board of education, shall at all times be subject to inspection by the taxable inhabitants of said district.

§ 18. No moneys shall be paid from the treasury, except on drafts drawn by the president and countersigned by the secretary of said board of education, in pursuance of a resolution

\* So in original.

of said board, which draft shall be made payable to the order of the person or persons entitled to receive said moneys, and shall state on their face respectively the purpose or service for which the same are drawn.

§ 19. The said board shall have power and it shall be their duty :

1. To establish and organize in said Kingston school district so many primary school districts, primary departments or schools, and departments of higher grades, including an academical department, to alter and discontinue the same as they may deem advisable ;

2. To hire or purchase school-houses, school rooms, lots or sites for school-houses, or sites with buildings thereon, to be used as school-houses, and to fence and improve such sites, and to sell the same with their appurtenances, as they may deem proper ; provided such sale be authorized by a vote of the district ;

3. To build, enlarge, alter, improve and repair school-houses, with their out-houses and appurtenances, as they may deem advisable ;

4. To have custody of said school-houses, out-houses, books, furniture and appurtenances, and to see that the ordinances, in relation to the care and safe keeping of the same, be observed ;

5. To contract with and employ all teachers in said public schools, the number of teachers not to be less than one for every fifty pupils attending such schools ;

6. To pay teachers' wages after the application of public money which may by law be appropriated and provided for that purpose, from the money authorized by this act to be raised for that purpose ;

7. To defray all necessary and contingent expenses of establishing and maintaining the said public schools with proper furniture, library and apparatus, and the necessary and contingent expenses of said board of education ;

8. To have in all respects the superintendence and management of the public schools of the said school district, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils and their transfer from one department to another, and generally for their good order and government ; to receive into said public schools pupils residing out of the said " Kingston school district," to regulate the tuition fees of such non-resident pupils and to collect the same ; to expel any scholar for misconduct or cause injurious to the interest of the school ; to regulate the transfer of pupils from one department to another ; to direct what text books shall be used in said public schools ; to provide and keep in repair school apparatus, books, furniture and appendages ; to provide fuel and other necessaries for the said public schools, and to appoint assistant librarians, as they may from time to time deem proper, and regulate their duties.

§ 20. The said trustees shall be trustees of the school libraries in said school district, and all the provisions of law relative to school district libraries shall apply to said trustees in like manner as to the trustees of any school district ; they shall also be invested with the same discretion as to the disposition of the moneys appropriated by law for the purchase of libraries as is conferred by law upon inhabitants of school districts. It shall be their duty to provide rooms for such libraries and the necessary furniture thereof. The librarian shall report annually to the board the condition of the libraries under his charge, and the said board shall make all purchases of books for said libraries, and direct the mode of their distribution.

§ 21. The title to the school-houses, lots, furniture, books, apparatus and appurtenances, and all other school property in this act mentioned, shall be vested in the said board of education, and the same, while used or appropriated for school purposes, shall not be subject to taxation, and shall not be levied on or sold by virtue of any warrant, or execution, except for teachers' wages, and the purchase price of articles bought by direction of the said board, and except that liens and all proceedings for enforcing the same, of mechanics and others for labor, and materials furnished in erecting, altering, or repairing buildings and their appurtenances, shall in no way be affected or impaired by this act ; and the said board in its corporate capacity shall have full right and authority to take and hold any personal and real estate transferred to it by grant, gift, devise or bequest, subject to the limitations provided by law, in trust for the public schools or educational interest of said Kingston school district, whether the same be in terms to said board in its corporate name, or by any other designation, or to any person, persons or bodies for the benefit of said public schools ; and all real or personal estate so transferred shall be accepted, held, used and applied as specified in the article or deed of transfer.

§ 22. The said board of education shall, once in each year, and at least fifteen days before the annual meeting for the election of officers, make a report to the inhabitants of the district, in which they shall set forth the whole amount and items of the money received, raised and collected by them during the year preceding the date of such report, and the amount and items of the expenditures for the same time ; also the number and condition of the various schools and departments in said school district ; the number of pupils attending such schools and departments during the year ; the number and names of the teachers employed by them, and the text books in use in such schools ; the number of volumes and condition of the books in the libraries of such districts, and such other facts and information relative to the affairs of said district as in their judgment may be of interest to the inhabitants thereof. [*As amended by § 2, chapter 40, Laws of 1864.*]

§ 23. The academical department which may be established, as aforesaid, shall be entitled to its distributive share of the literature fund in like manner and on like conditions with the academies of this State ; and the said academical department shall be subject to the visitation of the Regents of the University in like manner with the other academies of this State.

§ 24. It shall be lawful for the inhabitants of any school district in the town of Kingston

adjoining said Kingston school district, at any annual or special meeting, by a vote of a majority of the legal voters present, to declare said district to be a primary district, and to form a part of the said "Kingston school district." They shall then elect one trustee and one clerk, in the manner provided by this act, and shall hold their office for the term of three years from the first Monday of January following. The said trustee shall be a member of the said "Kingston board of education," and the said primary district shall be subject to all the conditions, rules and regulations of said "Kingston board of education," the same as any other primary district included in the said "Kingston school district," but no such action of any school district shall take effect or become operative for any purpose until said "Kingston board of education" shall by resolution accept such school district as such primary district.

§ 25. Nothing in this act shall be construed to affect or impair the powers or duties of the Superintendent of Public Instruction, in relation to the school districts hereby consolidated, but the same shall apply and be in force as to the school district hereby created, and the school or schools which may be maintained in said districts in like manner with the other districts and schools of this State.

§ 26. On the third Wednesday in May, eighteen hundred and sixty-three, a meeting shall be held at the court-house, in the said village of Kingston, of the persons qualified to vote at school district elections in the several school districts mentioned in the first section of this act, at which the president of the board of trustees of the village of Kingston, or, in case of his non-attendance, any one of the trustees of the said village, to be designated by a majority of those present at the opening of the meeting, shall preside and regulate the proceedings, and decide all questions which may arise thereat, at the said meeting. And it shall then and there be determined, by the vote of a majority of those who may attend and vote at the said meeting, whether the board of education, herein mentioned, shall or shall not organize: the votes shall be by ballot; on each ballot shall be written or printed, "For the school law;" or, "Against the school law." The poll shall open at eight o'clock in the forenoon, and remain open till six o'clock in the afternoon. A clerk or clerks, to be appointed by the presiding officer, shall receive the votes, keep a proper poll list of the persons voting, and canvass the votes given. The result of the said election shall be certified in due form by the presiding officer, and his certificate thereof be filed within twenty-four hours after the poll shall close, with the clerk or other proper officer of the said board of trustees. If a majority of the votes thus given be "For the school law," the said board of education shall organize as provided by this act; but if a majority of the said votes shall be "Against the school law," then and thereafter the provisions of this act shall be of no further force or effect, and the said several school districts mentioned in the first section hereof shall be and remain separate school districts as they now are.

[Chap. 40, *Laws of 1864*, p. 65.]

§ 2. The annual meeting of the inhabitants of the Kingston school district for the election of officers shall be held at such time as is now or shall hereafter be designated in the general school law of this State for holding annual school meetings, at such convenient place within the district as shall be designated by the Kingston board of education. In case of the failure of the inhabitants of the Kingston school district, from any cause, to hold the annual meeting at the time above specified, the same may be held at such other time thereafter as the board of education shall, by resolution, designate, and it shall be the duty of the board of education, after such failure, forthwith to make such designation, and give the requisite notice thereof.

§ 4. The trustees of Kingston academy are hereby authorized to transfer and convey their property, real and personal, to the Kingston board of education, absolutely or upon such terms and conditions as may be agreed upon. And it is hereby declared that such transfer, if made, shall not operate to dissolve the corporation, or corporate existence of the trustees of Kingston academy.

#### LANSINGBURGH.

[*Laws of 1847*, Chap. 336, p. 442.]

SECTION 1. The trustees of school district number one, in the town of Lansingburgh, in the county of Rensselaer, shall annually, at least three weeks before their annual meeting, prepare an estimate of the amount which they shall deem necessary to pay the debts of such district, and for the support of common schools therein, for the ensuing year, exclusive of the moneys which they may be entitled to receive from the town superintendent, and including the sums required for the purchase of necessary furniture, apparatus and books, and for contingent expenses, and shall cause printed or written notices thereof to be posted for two weeks thereafter, in five or more of the most public places in said district. They shall present such estimate at such annual meeting, when the inhabitants of such district, entitled to vote at school district meetings, then present, shall vote thereon, and the same having been approved of by a majority of such inhabitants, shall be levied and raised by tax on such district, as now provided by law for raising a district school tax.

§ 2. When the trustees shall have completed the tax list, they shall issue their warrant to the collector of taxes of said district, returnable in thirty days, for the collection of the same, and take from such collector approved security for the performance of his duty; such warrant may be renewed from time to time. The moneys so collected shall be paid to said trustees, and by them appropriated to the purposes for which the same was voted, unless otherwise directed by a vote of the inhabitants, at their annual district school meeting, or a special meeting called for the purpose.

§ 3. The tax hereby imposed shall be a lien upon the lands taxed, to be enforced and collected by sale, in the manner that county taxes are, upon a return to be made by said collector to the treasurer of the county, of all unpaid taxes in said district.

[Chap. 333, Laws of 1857, p. 697.]

This act is a transcript of the foregoing act, and is applicable to district number five, Lansingburgh. The provisions in both are the same.

#### LITTLE FALLS AND MANHEIM.

[Chap. 193, Laws of 1866, p. 375.]

SECTION 1. School district number one in the towns of Little Falls and Manheim, Herkimer county, is hereby constituted a free school district.

§ 2. The trustees of said district and their successors in office shall cause to be raised annually by tax on the taxable property of said district, a sum not exceeding four thousand dollars, which sum, or so much thereof as may be necessary, shall be applied, in addition to the public money appropriated to said district, to the payment of qualified teachers' wages.

§ 3. Any surplus of the moneys so raised remaining after the payment of all wages due to qualified teachers may be applied by said trustees and their successors in office to the purchase of fuel and necessary appendages, books and apparatus for the use of the school in said district.

§ 4. The school commissioner of the commissioner district in which said school district number one is situated shall have jurisdiction to alter the same in like manner with districts not under special act, provided, that no alteration whereby any property shall be set off from said school district shall be made without the written consent of the Superintendent of Public Instruction.

#### LOCKPORT.

[Laws of 1847, chap. 51, p. 50; Laws of 1850, chap. 77, p. 112; Laws of 1866, chap. 378, p. 189.]

SECTION 1. All the territory embraced in primary school districts numbers one, two, three, four, five, six and seven, as now constituted, which lies within the boundaries of the city of Lockport, and all other territory within the boundaries of said city, are hereby consolidated for the purpose and to the extent in this act specified; and shall hereafter, to such extent, form but one school district, to be called the union school district of the city of Lockport. Such parts of any of said primary districts as now bounded, as are outside the boundaries of said city, shall be annexed to adjoining districts in the town of Lockport.

§ 2. Said seven school districts shall remain and continue separate and distinct, for the purposes and to the extent in this act specified; and shall be called "primary school districts," and numbered as follows: said district number one shall form primary district number one; said district number two shall form primary district number two; said district number seven shall form primary district number three; said district number fifteen shall form primary district number four; said district number eight shall form primary district number five; said district number sixteen shall form primary district number six; and said district number five shall form primary district number seven. Said districts shall not be subject to alteration except by the acts of the Legislature, or by resolution of the board of education hereinafter created. The schools in said primary districts shall be used as preparatory schools for the instruction of children until they arrive at a certain age, and attain a certain proficiency in learning, who shall then be transferred, upon the proper testimonials, into the union school hereinafter mentioned; the age, qualifications and testimonials to be prescribed by the by-laws, rules and regulations of the board of education hereinafter created.

§ 3. Sullivan Caverno, residing in primary district number one; William G. M'Master, residing in primary district number two; Joseph T. Bellah, residing in primary district number three; Silas H. Marks, residing in primary district number four; Isaac C. Coulton, residing in primary district number five; John S. Woolcott, residing in primary district number six, and Edwin L. Boardman, residing in primary district number seven, are hereby appointed trustees in behalf of such districts respectively; and Nathan Dayton, Samuel Works, Jonathan L. Woods, Lyman A. Spaulding and Hiram Gardner are hereby appointed trustees in behalf of said union district. The trustees so named, and their successors, to be chosen as hereinafter provided, are hereby constituted a corporation by the name of the board of education for the city of Lockport.

§ 4. On the first Monday of September next there shall be elected, in the manner that trustees of school districts are now elected, by each primary district, one trustee (who shall be a resident of such primary district), to fill the places of those named in the last section, in behalf of such districts respectively. On the first Monday of October next there shall be elected, in like manner, by a meeting of the persons qualified to vote for school district officers, residing within the bounds of said union district, five trustees, resident of said union district, to fill the places of those named in the last section, in behalf of said union district. Annually thereafter, on the days above specified for such elections, there shall, in like manner, be elected four trustees to fill the places of those whose terms shall next thereafter expire, as hereinafter provided. The trustees named in the third section above shall hold their offices until the first Monday of January next, and until their successors shall be chosen and enter upon the discharge of the duties of their offices respectively. Every officer elected under this act shall enter upon the duties of his office on the first

Monday of January next succeeding his election, and shall hold his office for the term hereinafter provided, and until his successor shall be elected, and shall enter upon the discharge of the duties of his office. Within ten days after any such election, the clerk of such district shall certify to said board of education the names of the officers so elected.

§ 5. Within ten days after the first election of trustees of said union district, as provided in the last section, all the trustees so elected by said primary and union districts, or a majority of them, shall meet and cause the whole number of trustees so elected to be divided into three classes, to be severally numbered first, second and third. The term of office of the first class shall expire at the end of one year; of the second class, at the end of two years; and of the third class, at the end of three years from the first Monday of January next. There shall also be elected in each of said districts, at the time of so electing trustees, a clerk, who shall hold his office for one year, and until his successor be elected and enter upon the duties of his office.

§ 6. There shall annually be appointed, by said board of education, a collector, librarian and treasurer of said union district, who shall each, within ten days after receiving notice in writing of his appointment, and before entering upon the duties of his office, execute and deliver to said board of education a bond, in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and said board of education shall thereupon make an appointment to supply such vacancy.

§ 7. Notices for annual elections and all other meetings of said districts shall be given by said board of education, at least ten days before such election or meeting, by publishing such notice once in each of the newspapers printed in the village of Lockport; and if such notice be for an election or meeting of said union district, by posting the same on the door of the school-house in each primary district; if such notice be for an election or meeting of any primary district, then by posting such notice on the door of the school-house in such district.

§ 8. In case of a vacancy of any office mentioned in this act, occasioned by the death of such officer, his refusal to serve, removal out of the district for which he shall have been elected or appointed, his incapacity, or any cause other than the expiration of the term of office of persons elected, said board of education may make an appointment to fill such vacancy. The officer so appointed shall hold his office for the unexpired term of the person to supply whose place he shall be so appointed.

§ 9. Said board of education shall be a corporate body, in relation to all the powers and duties conferred upon them by virtue of the provisions of this act; a majority of the board shall form a quorum.

§ 10. Said board of education shall possess all the powers and be subject to all the duties, in respect to all of said school districts, that the trustees of common schools now possess or are subject to, and such other powers and duties as are given or imposed by this act. The clerk, collector and librarian of said union district shall possess all the powers and be subject to all the duties, in respect to said union district, that like officers of common schools now possess or are subject to, and such other powers and duties as are given or imposed by this act. The offices of collector and librarian, and two of the trustees of each of the school districts hereby consolidated, shall be abolished from and after the time when said union school shall go into operation. In the mean time, such officers and the several districts, in district meetings, shall continue to discharge such ordinary powers and duties as said board of education may by resolution prescribe; but they shall not possess or exercise any right or power which may conflict with the provisions of this act, or impair the powers hereby intended to be conferred on said board of education, or in any way embarrass the said board of education in the exercise of the powers or in the discharge of the duties conferred or imposed upon said board by the provisions of this act.

§ 11. Said board of education shall, at its first meeting, and annually thereafter, at their meeting held next after the first of January in each year, appoint one of their number president and another secretary. In the absence of either of such officers at any regular meeting of the board, a president or secretary may be appointed for the time being.

§ 12. The secretary shall keep a record of the proceedings of said board of education, which record, or a transcript therefrom, certified by the president and secretary, shall be received in all courts as presumptive evidence of the facts therein set forth.

§ 13. Each member of said board of education, and every other officer of said union district, before entering upon the duties of his office, shall take and subscribe the oath of office prescribed by the Constitution of this State and file the same with the secretary of said board.

§ 14. Said board of education shall have power, and it shall be their duty:

1. To establish and organize so many primary schools as they shall deem requisite and expedient, and to alter and discontinue the same;

2. To purchase or hire school-houses, rooms, lots or sites for school-houses, and to fence and improve them as they may think proper;

3. Upon such lots or sites, and upon any lot or site now owned by any primary district, to build, enlarge, alter, improve and repair school-houses, out-houses and appurtenances, as they may deem advisable;

4. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages; to provide fuel for the schools, and defray their contingent expenses and the expenses of the library and salary of the librarian;

5. To have the custody and safe keeping of the school-houses, out-houses, apparatus, books, furniture and appendages, and see that the ordinances and by-laws of said board in relation thereto be observed;

6. To contract with and employ all teachers in all the schools under their charge, and at their pleasure to remove them;

7. To pay the wages of such teachers out of the public money and tuition fees to be received by them, according to the provisions of this act, so far as the same shall be sufficient, and the deficiency, if any, out of the moneys to be raised for general purposes of education under and by virtue of the provisions of this act;

8. To fix the rate of tuition fees in said union school, subject to the limitations and restrictions hereinafter contained, and to designate some person or persons to whom the same may be paid previous to issuing the warrant for the collection thereof; and, by a resolution of said board, to be recorded by the secretary, to exempt from the payment of the whole or any part of the tuition fees such persons as they may deem entitled to such exemption, from indigence or any other sufficient cause; and the said board may include the amount so exempted or remitted in the estimate of the amount necessary to be raised under the provisions of the fifteenth section of this act, and when collected the same shall be credited to the teachers' fund;

9. After the close of each quarter of said union school to make out a rate-bill containing the name of each person liable to pay tuition fees for tuition in said union school, who shall not have paid the same prior to making out such rate-bill, according to the provisions of the last preceding subdivision of this section, and the amount for which such person is liable, adding thereto a sum not exceeding five cents on each dollar for collector's fees (which fees shall be fixed by said board at the time of making out every rate-bill); to annex thereto a warrant for the collection thereof, to be signed by the president of said board or a majority of the members thereof, and deliver the same to the collector, who shall collect the same in the same manner as collectors of school districts are by law authorized and required to execute like warrants issued by the trustees of common school districts, and who, in the execution of the same, shall be under the same protection, possess all the powers and be subject to all the duties as such collectors now have, possess and are subject to in respect to like warrants; and, for this purpose, the jurisdiction of said board of education and of said collector shall extend to any other district or town, and to any resident of such other district or town who may be liable for tuition in said union school, in the same manner and with the like authority as to said union district or residents of said union district;

10. To have in all respects the superintendence, supervision, management and control of all the schools mentioned or contemplated in and by the provisions of this act: to prescribe the course of studies therein, the books to be used, and establish an uniformity in respect to such course of studies and books; from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules, regulations and ordinances for the organization, government and instruction of such schools, for the reception of pupils and their transfer from one school to another, for the promotion of their good order, prosperity and public utility, for the protection, safe keeping, care and preservation of school-houses, lots, sites and appurtenances, and all other property connected with or appertaining to such schools;

11. To cause such rules, regulations, ordinances and by-laws to be published in such manner and form as they may deem best calculated to give general information; to cause one copy thereof, together with a copy of this act, to be kept in each of said schools; and such parts thereof as relate to such schools, respectively, to be read therein at least once during each quarter;

12. Said board of education shall in all respects be subject to the visitation and control of the superintendents of common schools of the town, county and State, in the same manner as the common schools in this State are subject.

§ 15. Said board of education shall, at the commencement of each year, make an estimate by the best means in their power, and determine by resolution the amount of money which will be needed for all the purposes of education in said union school district for the current year, and for all other purposes provided for by this act, over and above the moneys to be received from the Regents of the University, from the State and for tuition, and shall transmit a copy of said resolution to the common council of the city of Lockport, and said common council shall assess and collect the amount so certified, by a tax upon all the taxable property of said city, upon the same assessment roll, and at the same time and in the same manner that city taxes are now required to be assessed and collected, and the amount so estimated and collected shall be paid by the city treasurer upon orders drawn in pursuance of resolutions of said board of education, such orders to be signed by the president of said board and certified by its secretary. The amount of money so to be raised in any one year shall not be less than the amount received in behalf of all said districts from the State school tax for the year next preceding, nor more than four times that amount, unless such greater amount shall be authorized by a vote of the inhabitants of said union district, at a regular meeting of such district; and said board is hereby authorized, in making the estimate for the year eighteen hundred and sixty-six, to include a sufficient amount to pay all expenses contemplated by the foregoing provisions, which shall accrue before the first day of October, eighteen hundred and sixty-seven; and whenever any money shall be needed for the use of any primary or secondary district for any of the purposes contemplated by this act, said board of education shall estimate and certify the same to said common council, whose duty it shall be to assess and collect the same by tax on the taxable property of such primary or secondary district, in the same manner as above provided for the assessment and collection of the general tax, and the moneys so collected shall be paid on orders drawn as above provided, and shall be applied for the benefit of the respective districts upon which the same shall have been assessed.

§ 16. Said board of education shall have power, and it shall be their duty, forthwith to purchase a suitable lot, so situated as best to convene the whole of said union district, not



to exceed in cost the sum of twenty-five hundred dollars, and procure a clear title thereof, to be vested, by deed, in said board of education : to cause said lot to be graded, fenced and otherwise properly improved ; to erect thereon a suitable and proper building or buildings, to be built of stone or brick, not to exceed in expense the sum of eight thousand dollars, nor to cost less than five thousand dollars ; furnish the same with all proper, useful and necessary furniture, apparatus and appendages ; as soon as the building is in proper condition, employ a sufficient number of well educated teachers, male and female, and cause a school to be commenced therein, to be called " the Lockport union school," in which shall be taught only the higher branches of education.

The tuition fee in said union school shall not exceed two dollars each per quarter for pupils whose parents or guardians reside within the territory of said union district ; for all other pupils, said tuition fee shall not be less than two dollars nor more than five dollars per quarter. No tuition fee shall thereafter be charged, nor any rate-bill be made, for tuition in the primary schools, but the same shall be free schools.

§ 17. Said board of education shall, as soon as practicable, make an estimate of the amount of money which, in their opinion, will be necessary for the purposes in the last section specified, and also for such purposes specified in section fourteen of this act as may be needed or required for the first year, and shall forthwith assess, levy and collect the same, by tax upon real and personal estate, as specified in section fifteen of this act. They shall, for this and all other taxes to be raised by them, make out a tax list, in the manner and form in which like tax lists are now made by trustees of school districts, so far as such form is applicable ; annex thereto a warrant, in like form, signed by the president or a majority of the members of said board, and deliver the same to the collector ; which, when so made and signed, shall be as effectual, to all intents and purposes, as like tax lists and warrants when made by the trustees of common school districts. Said board may, in respect to the collection of all taxes, conform to the provisions of the twenty-ninth, thirtieth and thirty-first sections of the one hundred and eightieth chapter of the Session Laws of one thousand eight hundred and forty-five, and require the collector to comply with the provisions of said sections, so far as the same are applicable. Said board may so far vary from the provisions of said sections, as to time and places, as to render them applicable, and may make such warrants returnable at sixty or ninety days, in their discretion, instead of thirty days, as now required by law in respect to such warrants made by trustees of common school districts ; but all property now exempt, by section twenty-two, title five, chapter six, part third of the Revised Statutes, from execution, shall be exempt from all such warrants.

§ 18. All moneys to be raised by virtue of this act, and all moneys by law appropriated to or provided for said district, shall be paid to the treasurer of said board, who, together with the sureties upon his official bond, shall be accountable therefor to said board of education. Said treasurer shall not pay out any of such moneys, except by resolution of said board, and upon an order drawn by the president and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 19. Said board of education shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by the secretary or any other member of the board, as often as necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his last place of residence, at least twenty-four hours before the hour of meeting. No member of said board shall receive any pay or compensation for his services. It shall not be lawful for any member of said board, or any other officer of either of said districts, to become a contractor for building or making any improvement or repairs authorized by this act, or be in any manner directly or indirectly interested either as principal, partner or surety in any such contract. All contracts made in violation of this provision shall be absolutely void, and the person so violating shall forfeit the sum of fifty dollars, to be prosecuted for and recovered by said board.

§ 20. Instead of the report now required by law to be made by trustees of school districts to the town superintendent of common schools, the trustee to be elected for each primary district shall, within the time now required by law, make such report to said board of education, and shall therein embrace such other and further matters as may be required and prescribed by said board, or as such trustee may think the interests of such primary district or school may require. Said board of education shall annually, between the first of January and the first of March in each year, make to the town superintendent of common schools a report containing all such matters, relating as well to said union district and union schools as to said primary districts and their schools, as is now or shall hereafter be required by law, or the regulations of the Superintendent of Common Schools, to be reported to said town superintendent, and such other and further matters as they may deem advisable. Such report shall be received, by said town superintendent, instead of the reports now required from each of said seven districts. A copy of such report shall be filed with the secretary of said board.

§ 21. Said board of education shall, from time to time, appoint such and so many members of their board as they may deem proper, not less than three in number, a visiting committee, whose duty it shall be to visit said union school and each of said primary schools as often as once in each quarter, and make a report in writing to said board, showing the state and condition of each school, school-house, apparatus and appendages, and such other matters as said board may require of them, and such suggestions for the improvement of the same as they may deem proper and advisable ; such reports shall be filed and kept among the papers of said board. Such board may, in their discretion, cause such reports, or any parts of the same or the substance thereof, and any and all other matters relating to said schools, to be published in such form as they may deem advisable. They shall, at the close of each

year, publish in one or more of the village newspapers a report of the moneys received and expended by them during the year, and such other matters as they deem advisable.

§ 22. Whenever, in the opinion of said board, the interests of any primary district require the sale or exchange of the school lot therein, said board may cause such sale or exchange to be made, and hold the proceeds thereof for the use and benefit of such primary district.

§ 23. The title of school-houses, sites, lots, furniture, books, apparatus and appurtenances, and all other school property in this act mentioned, shall be vested in said board of education; and the same, while used for or appropriated to school purposes, shall be exempt from all taxes and assessments, and shall not be liable to be levied upon or sold by virtue of any warrant or execution. Said board of education in their corporate capacity shall be able to take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest or devise for the use of said schools or any or either of them; provided, however, that said board shall not have power to sell, grant, dispose of or incumber said union school lot.

§ 24. Every officer in this act mentioned, having at the time the possession, custody, care, charge or control of any property belonging to said schools or any or either of them, or any money raised by the provisions of this act or provided by law for the purposes of education in said village, shall, at the expiration of his term, or whenever such officer shall resign, be removed from office, cease to act, or his office be otherwise vacated, transfer all such property and pay over all such money to the board of education.

§ 25. Every resignation of officers appointed or elected under this act shall be made to the board of education; and such resignation shall have no force or effect, nor in any degree excuse such officer from the discharge of his duties, until the same be accepted and approved by a resolution of said board.

§ 26. Any such officer may be removed from office for any official misconduct or neglect of official duty by resolution of said board, two-thirds of the members thereof concurring. Opportunity shall be given to every such officer to be heard in his defense before any such resolution shall be adopted.

§ 27. Every person appointed or elected to any office mentioned in this act, who, without sufficient cause, shall refuse to serve therein, shall forfeit the sum of ten dollars; and every person so appointed or elected, and not having refused to accept, who shall neglect to discharge the duties of such office, shall forfeit the sum of twenty dollars to said board of education. It shall be the duty of said board of education forthwith to prosecute for all forfeitures and penalties under this act, and when recovered to apply the same to the purposes of education in said village. All officers mentioned in this act shall be deemed public officers, within the intent and meaning of section thirty-eight of title six of chapter one, part four of the Revised Statutes, and, as such, liable to the penalty therein prescribed, in addition to the penalty in this section before provided.

§ 28. The several libraries of the said seven districts are hereby consolidated into one. Said board of education shall cause a suitable and proper room to be fitted up in said union school building, and furnished with necessary and suitable fixtures, furniture, apparatus and appendages, and transfer said library thereto and put it under the charge of a librarian. They shall annually allow and pay to said librarian such salary as in their opinion shall be a fair and reasonable compensation for his services, but not to exceed the sum of fifty dollars in any one year. They shall pass such by-laws for the regulation and preservation of said library and for the discharge of the duties of the librarian as they may think necessary. The library money hereafter to be received in behalf of said districts shall be paid by the town superintendent to the treasurer of said board. Said board shall expend such money entirely for the purchase of books and maps for the library.

§ 29. Lands of residents and non-residents of said districts may be sold by said board for uncollected taxes, assessed thereon for school purposes by virtue of the provisions of this act, in the same manner and by like proceedings as the trustees of said village adopt to sell lands for unpaid taxes assessed for village purposes, and such sales shall have the like effect as sales so made by the trustees of said village; or, the lands of residents and non-residents of said districts said board may cause to be returned to the county treasurer, in the same manner as trustees of common school districts are now authorized by law to return unoccupied and unimproved real estate of non-residents of their districts for unpaid taxes assessed thereon. Said county treasurer shall pay to said board the amount of such taxes out of any moneys in the county treasury raised for contingent expenses; and such proceedings, in all respects, shall thereafter be had by said county treasurer and the board of supervisors of the county of Niagara, in relation to all lands so returned as they are by law required to take in respect to unoccupied and unimproved lands of non-residents when so returned by trustees of common school districts; but no lands shall be so sold or returned until a reasonable effort shall have been made to collect such taxes by warrant, as provided in section seventeen of this act, and the collector shall have returned that he cannot collect the same.

§ 30. Said board of education may cause a school for colored children to be taught in said village, and include the expenses thereof in the amount so to be raised annually by tax for contingent expenses and other purposes of education provided for in this act.

§ 31. Said board of education may organize in said union school a department for the instruction of teachers, for such parts of the year and under such rules and regulations as they may by their by-laws adopt relative thereto.

§ 32. Said board of education may at any time hereafter, whenever in their opinion the wants and interests of said schools shall require it, establish a class of so many schools, intermediate said primary and union schools, as they may deem advisable, to be called secondary schools; and for this purpose consolidate such and so many of said primary districts as they may deem advisable, prescribe the tuition fees and course of studies therein, and so arrange and regulate the system of instruction in all of said schools that the transfer

of pupils shall thereafter be from the primary directly into the secondary and thence into the union school; and for this purpose, and for the organization, government and regulation of said secondary schools, said board shall have all such powers as are hereinbefore conferred upon them in respect to said primary and union schools and their districts and property.

§ 34. Said board of education shall have power to borrow money, from time to time, whenever necessary, by reason of the non-payment of taxes, or a failure to collect a sufficient amount to pay the current expenses of the schools under its charge, as contemplated and provided for in section fifteen of this act, as amended; but in no case shall they borrow a greater amount than the amount estimated and reported to the common council, as provided by this act as amended.

[Chap. 77, Laws of 1850.]

§ 2. "The said board of education for the city of Lockport" is hereby authorized to increase the rates of tuition fees in the union school under its charge and to graduate the same according to the branches of instruction pursued, and may require fees for tuition of non-resident pupils to be paid in advance.

§ 3. Said board of education is hereby authorized to appoint a superintendent of the schools under its charge, with such powers and duties and compensation as said board shall prescribe, and such superintendent shall have power to examine and give certificates to all teachers who shall be employed in said union school district, and such certificates so given by said superintendent shall have the same force and effect as certificates given by county or assembly district superintendents have heretofore had and now have.

§ 4. From and after the first day of March, eighteen hundred and sixty-six, all secondary schools under the charge of the board of education for the city of Lockport shall be free, and no fees for tuition therein shall be charged or collected by said board.

§ 5. Said board shall not raise by tax, upon the property in the union school district, any money for the salaries of teachers in the union school district which shall accrue after the first day of April next.

§ 6. The acts and doings of said board of education, in accordance with the provisions of their act of incorporation, since the act entitled "An act establishing free schools throughout the State," passed March 26, 1849, took effect, are hereby ratified and confirmed.

§ 7. The public money which shall be apportioned to the districts included in the said union school district shall be paid to said board, and be applied by them to teachers' wages, in the several schools in their charge in said district, in proportion to the average number of scholars pursuing common school studies in each of said schools. The annual report of the receipts and expenditures, required to be published by said board, shall specify all sums received, and from whom, and all persons to whom payments were made, and the general character of the demands paid.

Upon the application of said board of education to "the Regents of the University of the State of New York," said Regents may acknowledge and declare said union school to be an academy; and it shall thereafter be an academy, subject to and to be governed by the provisions of the act authorizing said union school, and subject to such rules and regulations as said Regents may prescribe.

[Chap. 365, Laws of 1865, p. 644.]

Section sixteen, of title nine, is as follows:

§ 16. The boundaries of the union school district shall be and the same are hereby changed to include all the territory contained in the limits of the city of Lockport, not now included in the said district.

[Chap. 95, Laws of 1858, p. 189.]

SECTION 1. All taxes hereafter to be levied and collected within the bounds of the "union school district of Lockport," for contingent expenses appertaining to the union school, the secondary schools, the primary schools, and the colored school, shall be levied and collected of all the taxable property, real and personal, in said union school district, as one general tax, and shall be expended for the benefit of the said several schools, under the direction of the board of education for the village of Lockport; and no separate tax on the union school district, the secondary school districts, primary school districts, or for the colored school, shall hereafter be levied or collected for contingent expenses; but the expenses of purchasing a lot, or lots, for secondary or primary schools, and the erection of buildings or other permanent fixtures thereon, shall be levied and collected of all the taxable property, real and personal, in each of the said several districts.

[Chap. 377, Laws of 1863, p. 637.]

This is a temporary act, authorizing the purchase of several lots of land for school purposes, and the levying of taxes to pay for the same.

[Chap. 822, Laws of 1867, p. 2070, vol. 2.]

SECTION 1. The common school report now required to be made by the board of education for the city of Lockport shall hereafter be made to the State Superintendent of Public Instruction, instead of the school commissioner of the first assembly district of Niagara county, as the same has heretofore been made.

§ 2. The public money apportioned to the union school district of the city of Lockport shall hereafter be paid to the treasurer of the board of education for the city of Lockport, instead of the supervisor of the town of Lockport, as the same has heretofore been paid.

## LYONS.

[*Chap. 129, Laws of 1856, p. 192, as amended by chap. 290, Laws of 1860, p. 499, and by chap. 260, Laws of 1863, p. 469.*]

SECTION 1. School district number six, in the town of Lyons, county of Wayne, shall, for the purposes in this act specified, be hereafter known and called "the Lyons union school."

§ 2. Said district shall not be subject to alteration, except by an act of the Legislature, or by some resolution of the board of education hereafter created.

§ 3. John T. Mackenzie, Saxon B. Garritt, Morton Brownson, Lyman Sherwood, Caleb Rice, Zebulon Moore, George W. Cramer, William H. Sisson, and Aaron D. Polhamus, residing in the said district, are hereby appointed trustees in behalf of said district. The trustees so named, and their successors in office, to be chosen as hereinafter provided, are hereby constituted a corporation, by the name of "the board of education for the village of Lyons."

§ 4. On the third Monday of December next there shall be elected, in the manner that school district officers are now elected, by a meeting of the persons qualified to vote for school district officers, residing within the bounds of said district, nine trustees, residents of said district, to fill the places of those named in this act. Annually thereafter, on the days above specified, there shall, in like manner, be elected three trustees to fill the places of those whose terms shall next thereafter expire, as hereinafter provided. The trustees named in this act shall hold their offices until the first Monday of January next, and until their successors shall be chosen and enter upon the discharge of the duties of their offices respectively. Every officer elected under this act shall enter upon the duties of his office on the first Monday of January next succeeding his election, and shall hold his office for the term hereinafter provided, and until his successor shall be elected, and shall enter upon the duties of his office. Within ten days after any such election, the clerk of such district shall certify to said board of education the names of the officers so elected.

§ 5. Within ten days after the first election of trustees, as provided in the last section, all the trustees so elected, or a majority of them, shall meet and cause the whole number of trustees so elected to be divided by lot into three classes, to be severally numbered first, second and third. The term of office of the first class shall expire at the end of one year; of the second class, at the end of two years; and of the third class, at the end of three years from the first Monday of January next. There shall also be elected in said district, at the time of so electing trustees, a clerk of said district, who shall hold his office for one year, and until his successor be elected and enter upon the duties of his office.

§ 6. There shall annually be appointed, by said board of education, a collector, librarian and treasurer of said district, who shall each, within ten days after receiving notice in writing of his appointment, and before entering upon the duties of his office, execute and deliver to said board of education a bond, in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacant, and said board shall thereupon make an appointment to supply such vacancy as often as it may occur.

§ 7. Notice for annual elections and all other meetings of said districts shall be given by said board of education, at least two weeks before such election or meeting, by publishing such notice once in each week in each of the newspapers printed in the village of Lyons, and by posting the same in at least five of the most public places in said district.

§ 8. In case of a vacancy of any office mentioned in this act, occasioned by death, refusal to serve, removal, or any other cause than the expiration of the term of office of persons elected, said board may make an appointment to fill such vacancy. The officer so appointed shall hold his office for the unexpired term of the person to supply whose place he shall be appointed, and until his successor shall be elected and enter upon the duties of his office.

§ 9. Said board of education shall be a corporate body, for the purposes and in relation to all the powers, conferred on them by virtue of the provisions of this act, and also by virtue of the provisions of an act entitled "An act in relation to school district number six in the town of Lyons, Wayne county," passed April 19, 1855, all of which said act, inconsistent with this act, is hereby repealed. A majority of said board shall form a quorum.

§ 10. Said board of education shall possess all the powers and be subject to all the duties, in respect to said school district, that the trustees of common schools now possess or are subject to not inconsistent with this act, and such other powers and duties as are given or imposed by this act. The clerk, collector and librarian of said district shall possess all the powers and be subject to all the duties, in respect to said district, that like officers of common schools now possess or are subject to, not inconsistent with this act, and such other powers and duties as are given or imposed by this act. The offices of trustees, collector and librarian in said district, at the time of the passage of this act, shall be abolished from and after the time when said union school shall go into operation under this act, excepting so far as it shall be necessary for said trustees and collector to collect any tax heretofore voted, levied or assessed in said district, or any rate bill, or tax for exemptions, necessary to be raised for the payment of teachers' wages, that shall have accrued at the time of the passage of this act, or at the time said school shall go into operation under this act, or for any arrearages for taxes or rate bills, or other matters, the said trustees and collector are hereby authorized and required to continue their terms of office respectively, for the purpose of collecting such or any tax and rate bill, or either; and if not already assessed and warrants issued, as required by law, time is hereby given them for that purpose, and closing up such arrearages as herein stated, and for such purposes only said trustees and collector shall have all the powers, and be subject to all the duties and liabilities that like officers now possess and are subject to.

§ 11. Said board of education shall, at its first meeting, and annually thereafter, at their meeting held next after the first of January in each year, appoint one of their number president and another secretary. In the absence of either of such officers at any regular meeting of the board, a president or secretary may be appointed for the time being.

§ 12. The secretary shall keep a record of the proceedings of said board of education, which record or a transcript therefrom, certified by the president and secretary, shall be received in all courts as presumptive evidence of the facts therein set forth.

§ 13. Each member of said board of education, and every other officer of said school district, before entering upon the duties of his office, shall take and subscribe the oath of office prescribed by the Constitution of this State, and file the same, or a certificate thereof, signed by the officer administering the same, with the secretary of the said board; but no fee or compensation shall be taken or demanded for administering such oath.

§ 14. The said board of education shall have power, and it shall be their duty:

1. To have the custody and safe keeping of the school lot and buildings belonging to said district, and to fence and improve the same as they may think proper;

2. Upon such lot to alter, improve and repair the school building and out-houses thereon, and to build, enlarge, repair and improve out-houses and appurtenances thereon, as they may deem advisable;

3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages; to provide fuel for the said school, and defray their contingent expenses and the expenses of the library and salary of the librarian;

4. To have the custody and safe keeping of the apparatus, books, furniture and appendages, and see that the ordinances and by-laws of said board in relation thereto be observed and enforced;

5. To contract with and employ all teachers in all the schools under their charge, and also a janitor and librarian, and at their pleasure to remove them;

6. To pay the wages of such teachers out of the public money and tuition fees to be received by them, according to the provisions of this act, so far as the same shall be sufficient, and the deficiency, if any, out of the moneys to be raised as provided for by this act;

7. To divide said school into four grades, according to the branches of instruction pursued therein; commencing with the primary departments or grades, designating the same by numbers first, second, third and fourth, concluding with the academical department;

8. To fix the rate of tuition fees in said school, subject to the limitations and restrictions hereinafter contained, and to designate some person or persons to whom the same may be paid previous to issuing the warrant for the collection thereof; and, by a resolution of said board, to be recorded by the secretary, to exempt from the payment of the whole or any part of the tuition fees such persons as they may deem entitled to such exemption from indigence; but no deduction for tuition fees shall be made by said board of education for the non-attendance of any pupil at said school after the time of the commencement of such pupil in any quarter until the close thereof, unless the same shall be satisfactorily excused to said board of education, within five days after the close of such quarter;

9. After the close of each quarter of said school to make out a rate bill containing the name of each person liable to pay tuition fees for tuition in said school, who shall not have paid the same prior to making out such rate bill, according to the provisions of the last preceding subdivision of this section, for the amount for which such person is liable, adding thereto a sum not exceeding five cents on each dollar for collection fees (which fees shall be fixed by said board at the time of making out every rate bill); to annex thereto a warrant for the collection thereof, to be signed by the president of said board or a majority of the members thereof, and deliver the same to the collector, who shall collect the same in the same manner as collectors of school districts are by law authorized and required to execute like warrants, and, for this purpose, the jurisdiction of said board of education and of said collector shall be the same as trustees and collectors of common schools now possess;

10. To have in all respects the superintendence, supervision, management and control of all the schools mentioned or contemplated in and by the provisions of this act; to prescribe the course of studies therein, the books to be used, and establish a uniformity in respect to such course of studies and books; from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules, regulations and ordinances for the organization, government and instruction of such schools, for the reception of pupils and their transfer from one department or grade to another, for the promotion of their good order, prosperity and public utility, for the protection, safe keeping and preservation of said school-houses, out-houses, lots and appurtenances, and all other property connected with or appertaining to such schools;

11. To cause such rules, regulations, ordinances and by-laws to be published in such manner and form as they may deem best calculated to give general information. The matters contained in subdivisions one, two and three of this section, shall not embrace any outlays beyond the sum or sums voted in each year by said district, to be raised by tax therein;

12. Said board of education shall in all respects be subject to the visitation and control of the superintendent of common schools of said town, and Superintendent of Public Instruction of said State, in like manner as the common schools in this State now are;

13. Said board of education are empowered to establish, organize and maintain a classical department in the school under their charge in said district, agreeably to an act passed April nineteen, eighteen hundred and fifty-five, entitled "An act in relation to school district number six, in the town of Lyons, Wayne county." And the said Regents are hereby authorized and required, at their next apportionment of the literature fund, to add to the portion to which this school may be entitled, such sum as said school would have been entitled the previous year had they made their annual report in season; provided, however,

that nothing in this section shall affect the rights and duties of said board of education, granted or imposed by this act, or the statutes of this State relating to common schools.

§ 15. Said board of education shall have power, and it shall be their duty, to raise from time to time, by tax upon the real and personal estate within the bounds of said district which shall be liable to taxation for the ordinary taxes of said village, or for town or county taxes or charges, such sums as may be determined, by resolution of said board, to be necessary to meet any deficiency for fuel, for the payment of teachers' wages, salary of janitor and librarian, and for text books for exempts, as contemplated by this act, without a vote of the district, and also such other sum or sums of money as shall, or may at any time be voted by said district, for any purpose connected with the subject of education in said district, to provide for which, power shall be given to said board, by the provisions of this act, the laws relating to common schools, or the rules and regulations of the Department of Public Instruction of said State. Said board shall, at each annual meeting, submit an estimate of the amount of money which will, in their opinion, be needed for all the purposes of education and other purposes provided for by this act (except to meet deficiency for the payment of teachers' wages, and purchase of text books for exempts, over and above the moneys to be received from the town superintendent, tuition fees, and literature fund), to be voted at such meeting, and shall cause the sum or sums, so voted at such meeting, to be raised by one assessment and warrant, with power of renewal, as hereby granted to trustees. Such assessment may be made and levied, and warrant issued, in any one year as often as such tax shall be voted. Taxes to meet any deficiency for the payment of teachers' wages, and the purchase of text books for exempts, may be assessed, levied and collected by said board of education, in the same manner that taxes are assessed, levied and collected, as in this act provided, whenever the same shall be deemed necessary by said board. The taxable inhabitants of said district are hereby authorized, at any regular meeting of such district, to levy and raise, in the manner now provided by law for raising money by tax in school districts, from time to time, such sum or sums as shall be necessary for the purposes of education in said district.

(Section 16 is repealed.)

§ 17. Said board shall, as soon as practicable, after any tax shall have been voted by said district, for the purposes in this act expressed and intended, forthwith assess, levy and collect the same, by tax upon real and personal estate, as specified in this act. They shall, for said tax and all other taxes to be raised by them, make out a tax list, in the manner and form in which like tax lists are now made by trustees of school districts, so far as such form is applicable, using as a basis for all assessments the last completed town or village assessment roll or warrant, or both, as the case may in their opinion require, and annex to such tax list a warrant, in like form, signed by the president or a majority of the members of said board, and deliver the same to the collector; which, when so made and signed, shall be as effectual, to all intents and purposes, as like tax lists and warrants when made by the trustees of common school districts.

§ 18. All moneys to be raised by virtue of this act, and all moneys by law appropriated to or provided for said district, or to which the same shall at any time be entitled, shall be paid to the treasurer of said board, who, together with the sureties upon his official bond, shall be accountable therefor to said board of education, when thereunto required. Said treasurer shall not pay out any of such moneys, except by resolution of said board, and upon an order signed by the president and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 19. Said board of education shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by the secretary, as often as necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his last place of residence, at least twenty-four hours before the hour of meeting. No member of said board shall receive any pay or compensation for his services. It shall not be lawful for any member of said board, or any other officer of said district, to become a contractor for building or making any improvement or repairs authorized by this act, or be in any manner directly or indirectly interested, either as principal, partner or surety, in any such contract. All contracts made in violation of this provision shall be absolutely void, and the person so violating shall forfeit the sum of fifty dollars, to be prosecuted for and recovered by said board.

§ 20. Said board of education shall, from time to time, appoint such and so many members of their board as they may deem proper, not less than three in number, a visiting committee; whose duty it shall be to visit said school as often as once in each quarter, and make a report in writing to said board, showing the state and condition of each department or grade of said school, the school-house, apparatus, library and appendages, and such other matters as said board may require of them, and such suggestions for the improvement of the same as they may deem proper and advisable; such report shall be made at least one week prior to the close of each quarter, and shall be filed and kept among the papers of said board. Such board may, in their discretion, cause such report, or any part thereof, and any other matters relating to said school, to be published in such form as they may deem advisable. They shall, at the close of each year, publish in one or more of the village newspapers a report of the moneys received and expended during the year, specifying therein all sums received, and from whom, and all persons to whom payments were made, and the general character of the demand paid, and such other matters as they may deem advisable.

§ 21. The title to the present site, buildings, furniture, books, apparatus and each and every of the appurtenances, and all other school property in this act mentioned, shall be vested in said board of education; and the same, while used for or appropriated to school purposes, shall be exempt from all taxes and assessments, and shall not be liable to be levied upon or sold by virtue of any warrant or execution.

§ 22. Every officer in this act mentioned, having the possession, custody, care, charge or control of any property belonging to said district, or any money raised by the provisions of this act or provided by law for the purposes of education in said district, shall, at the expiration of his term, or whenever such officer shall resign, be removed from office, cease to act, or his office be otherwise vacated, transfer all such property and pay over all such money to the board of education.

§ 23. Every resignation of officers appointed or elected under this act shall be made to the board; and such resignation shall have no force or effect, nor in any degree excuse such officer from the discharge of his duties, until the same be accepted and approved by a resolution of said board.

§ 24. Any such officer may be removed from office for any official misconduct or neglect of official duty by resolution of said board, two-thirds of the members concurring. Written notice of the charges shall be served upon, and opportunity shall be given to every such officer to be heard in his defense before any such resolution shall be adopted.

§ 25. Every person appointed or elected to any office mentioned in this act, who, without sufficient cause, shall refuse to serve therein, shall forfeit the sum of ten dollars; and every person so appointed or elected, and not having refused to accept, who shall neglect to discharge the duties of such office, shall forfeit the sum of twenty dollars to said board of education. It shall be the duty of said board of education forthwith to prosecute for all forfeitures and penalties under this act, and when recovered to apply the same to the purposes of education in said district. All officers mentioned in this act shall be deemed public officers, within the intent and meaning of section thirty-eight of title six of chapter one, part four of the Revised Statutes, and, as such, liable to the penalty therein prescribed, in addition to the penalty in this section before provided.

§ 26. Said board shall cause the library belonging to said district to be kept in a suitable and proper room in said school building or other place in said district, properly fitted up and furnished with necessary fixtures, furniture and appendages, and shall put the same under the charge of a librarian; they shall annually allow and pay to the said librarian such salary as in their opinion shall be a fair and reasonable compensation for his services; they shall pass such by-laws for the regulation and preservation of said library and for the discharge of the duties of librarian as they may think necessary. The library money hereafter to be received in behalf of said district shall be paid by the town superintendent to the treasurer of said board; said board shall expend such money entirely for the purchase of books and maps for the library.

§ 27. Lands of residents and non-residents of said districts may be sold by said board for uncollected taxes, assessed thereon for school purposes by virtue of the provisions of this act, in the same manner and by like proceedings as the trustees of the village of Lyons adopt to sell lands for unpaid taxes assessed for village purposes, and such sales shall have the like effect as sales so made by the trustees of said village; or, the lands of residents and non-residents of said district, said board may cause to be returned to the county treasurer, in the same manner as trustees of common school districts are now authorized by law to return unoccupied and unimproved real property of non-residents of their districts for unpaid taxes assessed thereon. Said county treasurer shall pay to said board the amount of such taxes out of any moneys in the county treasury raised for contingent expenses; and such proceedings, in all respects, shall thereafter be had by said county treasurer and the board of supervisors of the county of Wayne, in relation to all land so returned, as they are by law required to take in respect to unoccupied and unimproved lands of non-residents when so returned by trustees of common school districts; but no lands shall be so sold or returned until a reasonable effort shall have been made to collect such taxes by warrant, as provided in section seventeen of this act, and the collector shall have returned that he cannot collect the same.

§ 28. Said board of education may organize a department in said school for the instruction of teachers, for such parts of the year, and under such rules and regulations as they may by their by-laws adopt in relation thereto.

[Chap. 550, *Laws of 1855*, p. 1048.]

The following is the law referred to in sections nine and fourteen of the foregoing act:

SECTION 1. The trustees of school district number six, in the town of Lyons, in the county of Wayne, and their successors in office, are hereby constituted a body corporate, by the name "of the Lyons union school" and empowered to establish, organize and maintain a classical department in the school under their charge, in said district, by that name, which department shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies, and to share in the distribution of the moneys of the literature fund of this State, as the academies thereof; provided, however, that this act shall not affect the rights and duties of said trustees and district, under the statutes of this State relating to common schools.

[Chap. 260, *Laws of 1863*, p. 469.]

SECTION 1. The board of education of the village of Lyons shall not hereafter collect or receive any fees or compensation for the instruction in the school under the charge of said board, of pupils whose parents or guardians reside within the territory embraced in school district number six in Lyons, known as the Lyons union school; the charges for tuition of all other pupils admitted into said school shall be regulated by said board from time to time, as they shall deem proper.

§ 2. Any sums necessary for the payment of teachers' wages, after applying to that purpose any moneys, or income in the hands, or under the control of said board, applicable thereto, shall be levied and collected upon the taxable property of said district, as other taxes are now required by law to be levied and collected.

§ 3. Section sixteen of chapter one hundred and twenty-nine of the Session Laws of 1856, is hereby repealed.

# LYSANDER AND VAN BUREN.

[*Chap. 94, Laws of 1864, p. 138.*]

SECTION 1. School districts number two (2), of the town of Lysander, of the county of Onondaga, and number eighteen, of town of Van Buren, of the same county, are hereby consolidated for the purpose and to the extent in this act specified, and shall hereafter for such purposes and to such extent form but one school district, to be called "The Baldwinsville union free school district."

§ 2. Said school districts shall remain and continue separate and distinct, for the purpose and the extent in this act specified, and shall be called "primary school districts," and numbered as follows: said district number two (2) of Lysander shall form district number one (1), and said district number eighteen (18), of Van Buren, shall form primary district number two (2), and said districts shall not be subject to alteration, except by resolution of the board of education hereinafter created. The schools in said primary districts shall be preparatory schools for the instruction of children, until they attain a certain proficiency in learning, who shall then be transferred into the academy or high school hereinafter mentioned, the qualifications to be prescribed by the by-laws, rules and regulations of the board of education hereinafter created.

§ 3. The following named persons, to wit: James Frazee, John P. Shumway, Abel H. Tell, Henry Y. Allen, Silas H. Nichols and Payn Bigelow, and their successors to be chosen as hereinafter provided, are hereby constituted a corporation, by the name of the "board of education for the Baldwinsville academy and union free school." The three persons first named shall hold their office until the first Monday of January, one thousand eight hundred and sixty-five (1865), and the three persons last named until the first Monday of January, one thousand eight hundred and sixty-six (1866).

§ 4. The annual meeting of the electors of said union district shall be held on the second Tuesday in October of each year, at such hour and place in said district as the board of education shall previously designate. The president of the board of education, or, in his absence, the president for the time being, shall preside; and the clerk, or in his absence, the clerk for the time being, shall act as secretary thereof.

§ 5. At the annual meeting to be held in the year one thousand eight hundred and sixty-four (1864), three members of the board of education shall be elected to fill the places of the three persons first named in section three of this act. The places of the next three shall be filled at the annual meeting to be held in the year one thousand eight hundred and sixty-five; and annually thereafter, on the second Tuesday of October, there shall in like manner be elected three members to fill the places of those whose terms of office shall next thereafter expire. Every officer elected under this act shall enter on the duties of his office on the first Monday of January next succeeding his election, and shall continue in office for the term of two years. Of the three members of the board of education elected at any annual meeting, two shall be residents and taxable inhabitants of primary district number one, and one of primary district number two. At the first regular meeting of the board of education after any such election, the clerk shall certify to the board the names of the officers so elected.

§ 6. Said board of education shall be a corporate body in relation to all the powers and duties of this act, and a majority of the board shall form a quorum.

§ 7. At the first regular meeting of the board of education, held in January in each year, they shall appoint a clerk, librarian, collector and treasurer of said union district, the last two of whom shall each, within twenty days after receiving written notice of his appointment, and before entering upon the duties of his office, execute and deliver to said board of education a bond, in such penalty and with such sureties as the said board may require, conditioned for the faithful discharge of the duties of his office.

§ 8. In case of a vacancy in any office mentioned in this act, occasioned by the death of such officer, his removal from the district, refusal to serve, his incapacity, or any cause other than the expiration of the term of office of persons elected, said board of education may make an appointment to fill such vacancy. The officer so appointed shall hold his office until the next annual election.

§ 9. Notices for annual meetings and all other meetings of said union district shall be given by said board of education at least ten days before such meeting, by publishing such notice once in each of the newspapers printed in the village of Baldwinsville, and by posting the same on the door of each school-house in said union school district.

§ 10. Said board of education, and the clerk, the librarian, and the collector of said union district, shall severally possess all the powers and be subject to all the duties, in respect to all the schools in said union district, that the trustees and other officers of common schools now possess or shall be subject to by law, and such other powers and duties as are given or imposed by this act.

§ 11. From and after the first meeting of the board of education under this act, the offices of trustee, librarian, clerk and collector, in each of the school districts included within the limits of the said union school district shall be abolished, and the title of the property of the said school districts, real and personal, shall from thenceforth become the property



of and be vested in the said board of education, in its corporate capacity, as created by this act; and said board shall settle all business of the school districts forming said union district then remaining unsettled.

§ 12. The said board of education shall, at their said first meeting, and uniformly thereafter, at their meeting to be held next after the first Monday of January in each year, appoint one of their number president. The clerk of said union district shall act as secretary to said board. In the absence of either of said officers at any regular meeting of the board, a president and a secretary may be appointed for the time being.

§ 13. The said clerk, in addition to such other duties as are or may be imposed on him by law, or required of him by the board, shall keep a record of the proceedings of said board of education, which record, or a transcript thereof, certified by the president and secretary, shall be received in all courts, and for all purposes, as presumptive evidence of the facts therein set forth.

§ 14. The said board of education shall have power, and it shall be their duty:

1. To establish and organize a classical school in the village of Baldwinsville, to be known by the name of "The Baldwinsville academy," which school shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies, and to a share in the distribution of the moneys of the literature fund of this State, the same as the other academies thereof;

2. To establish and organize such and so many primary schools in said district, including for that purpose the common schools therein, as they shall deem requisite and expedient, and to alter and discontinue, or change and consolidate the same;

3. To build, purchase or hire school-houses, rooms, lots or sites for school-houses, and to fence, improve, adorn and repair the same, as they may think proper;

4. Upon such lots or sites, and upon any lots or sites now owned by any school districts within the limits of said union district, erected by this act, to build, enlarge, alter, improve, adorn and repair school-houses, out-houses and appurtenances, as they may deem advisable;

5. To purchase, exchange, improve and repair school apparatus, globes, maps, furniture and appendages, books for indigent pupils and for the school library; to provide fuel and lights, and defray the contingent expenses of the schools, of the board, the library and the salary of the librarian and clerk;

6. To have the custody and safe keeping of the school-houses, out-houses, and all the real and personal property belonging, or which shall belong to said union school district and primary schools, and see that the ordinances and by-laws of said board in relation thereto be observed;

7. To contract with and employ teachers competent in the several departments of instruction; to remove them at any time for neglect of duty or immoral conduct, and to pay the wages of such teachers out of the moneys appropriated for that purpose;

8. To pay the wages of such teachers out of the public moneys and tuition fees received for that purpose, and the deficiency, if any, out of the moneys to be raised by tax for general purposes of education under this act;

9. To fix the rates of tuition fees in said academy, and to designate some person or persons to whom the same may be paid;

10. To have, in all respects, the superintendence, supervision, management and control of all the schools mentioned or contemplated, in and by the provisions of this act, to prescribe the course of studies therein, the books to be used, and to establish a uniformity in respect to such course of study and books; from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules, regulations and ordinances for the organization, government and instruction of such schools, for the reception of pupils, and their transfer from one school to another, for the expulsion of any pupil from any of said schools for misconduct, for the promotion of morals and good order in said schools, their prosperity and public utility; for the protection, safe keeping, and care and preservation of school-houses, lots, sites, fences, ornamental trees and shrubbery, and appurtenances, and all other property connected with or appertaining to such schools, and to cause such rules, regulations, ordinances and by-laws to be printed and published in such a manner as they may deem best calculated to give general information thereof;

11. The said board of education shall have power, and it shall be their duty, to raise, from time to time, by tax upon all the real and personal estate within the bounds of said union district, which shall be liable to taxation for town and county charges, such sums of money as may be determined by resolution of said board, to be necessary for any and all the purposes mentioned in this act, or to meet any deficiency for any purpose of education in said district, to provide for which, power may be given to the said board by the provisions of this act, or any law relating to common schools, or the rules, regulations, or any order of the Superintendent of Public Instruction;

12. Said board of education shall, at the commencement of each year, make an estimate, by the best means in their power, of the amount of money which will be needed for all the purposes of education, and other purposes provided for by this act, over and above the public money and moneys to be received from the other sources, if any, and shall cause the same to be raised upon one assessment or warrant; and not more than two taxes for such purposes shall be raised in one year. The amount of money so to be raised for teachers' wages, in any one year, shall not be less than the amount received from the State for the support of said schools for the year next preceding, nor shall more than four times that amount be raised by the board of education for that purpose, unless such greater amount shall be authorized by a vote of the voters at school meetings of said union free school district, at an annual or special meeting of such district, when they shall have power to vote such sum or sums as they may deem necessary for school purposes.

§ 15. All the primary schools and the academy in said union school district, and which shall be under the charge of the board of education, shall be free schools, and no tuition shall be charged nor any rate bill made out for the tuition in the regular or prescribed course of study of any pupils of lawful school age, who are or may be actual residents of said union school district; but said board of education shall have power to establish or charge such rates of tuition, as they shall see fit, for non-resident pupils, and for the instruction of all pupils in any branches of learning not embraced in the regular course of study prescribed by said board of education.

§ 16. They shall, for all taxes raised by them, make out a list in the manner and form in which tax lists are or shall be required by law to be made out by trustees of school districts, so far as such form is applicable; annex thereto a warrant in like form, signed by the president, or majority of the members of said board, and deliver the same to the collector, which, when so made and signed, shall be as effectual to all intents and purposes, as like tax lists and warrants, when made by the trustees of common school districts in this State. Said board may, in respect to the collection of taxes, conform to the provisions of the twenty-ninth, thirtieth and thirty-first sections of chapter one hundred and eighty of Session Laws of one thousand eight hundred and forty-five, and require the collector to comply with the provisions of said sections so far as the same are applicable.

Said board may make their warrants returnable at discretion, not less than thirty days, nor more than ninety days, from the issuing thereof. The said board may assess, levy and collect the amount of taxes to be raised under the preceding sections, in not more than two annual installments.

§ 17. All moneys to be raised by virtue of this act, and all moneys by law appropriated to or provided for said districts, shall be paid to the treasurer of said board, who, together with the sureties on his official bond, shall be accountable therefor to the said board of education; said treasurer shall not pay out any of said moneys except by resolution of said board, and upon an order drawn by the president and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 18. Special meetings of the board of education may be called by the president, or in his absence or inability to act, by the secretary, or any member of said board, as often as necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his place of residence, at least twenty-four hours before the hour for such special meeting. No member of said board shall receive, directly or indirectly, any pay or compensation for his services.

§ 19. The said board of education shall annually make a like report in all respects as required from trustees of common school districts to the school commissioner. Such reports shall be received by the school commissioner instead of the reports now made by trustees of the school districts included in said union district. The supervisors of the several towns from which the said union district is taken shall, in making their apportionment of school or library moneys, allot to said union district its proportion of said moneys according to law, regulating its apportionments to districts formed out of two or more towns, and the report of its board of education shall be regarded as the report of its trustees. All such sums shall be paid by said supervisors to the treasurer of said board of education. A copy of the reports of said board of education shall be filed with the clerk or secretary of the board. The board of education shall, at the close of each school year, publish in one or more of the village newspapers, a report of the moneys received and expended by them during the year, showing the sources from whence received, and the objects of expenditure, and such other matters pertaining to public instruction in said district as they shall deem expedient.

§ 20. Whenever, in the opinion of said board, a sale or exchange of any primary school-house or house and lot would be proper, said board may cause such sale or exchange to be made, and may buy a new site or may at any time build a new house for the accommodation of any portion of said district, when authorized thereto by a vote of a majority of the tax payers of said union district present and voting at any annual or special meeting called together as herein provided.

§ 21. All the school property of said board of education, real and personal, while used for and appropriated to school purposes, shall be exempt from all taxes and assessments, and shall not be liable to be levied upon or sold by virtue of any warrant or execution. Said board of education, in their corporate capacity, shall be able to take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest or devise, for the use of said district or any schools under their charge. Said board shall not have power to sell, grant, dispose of or incur said academy or school lots. No portion of the library money paid to said board of education shall be expended for teachers' wages, but shall be appropriated exclusively for the increase and benefit of the library and for school apparatus.

§ 22. All the lands included in the bounds of said union district shall be subject to taxation therein under this act, without regard to the residence of the owners thereof, and the board of education may cause them to be returned to the county treasurer, in the same manner as trustees of common schools are authorized to return unoccupied and unimproved real estate of non-residents of their districts for unpaid taxes assessed thereon. Said county treasurer shall pay to said board the amount of said taxes out of any moneys in the county treasury not otherwise specifically appropriated, and such proceedings in all respects shall thereupon be had in relation to such taxes and lands, as required by law in relation to such lands when so returned by trustees of common school districts.

§ 23. The taxes imposed by the provisions of this act, shall be a lien upon the lands taxed, to be enforced and collected by sale in the manner that county taxes are, upon a return to be made by the collector to the treasurer of the county of all unpaid taxes in said district.

§ 24. The board of education, or a majority of the same, in conjunction with the school commissioner of the first commissioner district of Onondaga county, shall have power at any time to change the bounds of said union school district by annexing to the said district the whole or part of any adjoining common school district, the whole of a majority of the voters of said school district, and they shall further have power to set off to any adjoining district, any part of such union school district as the majority of the voters of said union school district may determine; but no such change shall be made between the first day of April in any year, and the first day of October next following.

§ 25. All the expenses incurred by said school district number two, of the town of Lysander, for alterations and repairs of school buildings, since the eighteenth day of December, one thousand eight hundred and sixty-three, and all the expenses incurred by both of said districts for teachers' wages, fuel, printing, rent of buildings, or any other expenses whatever, connected with or incurred for the support of said schools in the said districts since the first day of January, one thousand eight hundred and sixty-four, beyond the public moneys or other moneys on hand, shall be paid by tax, and the total amount of expenses incurred as specified in this section, shall be embraced in the first tax levied by the board of education of said union district; and the board of education of said union school district is hereby empowered, and it shall be their duty, at their first regular meeting after the passage of this act, to levy a tax in accordance with the twelfth article of the fourteenth section of this act, for the support of the schools in said union school district for the current school year.

#### MALONE DISTRICTS, NOS. 1, 14, 15 AND 23.

[*Chap. 370, Laws of 1858, p. 638.*]

SECTION 1. School districts numbers one, fourteen, fifteen and twenty-three, in the town of Malone, in the county of Franklin, are hereby consolidated, for the purposes in this act specified, and shall hereafter form but one school district, to be called "The village school district of the town of Malone."

§ 2. Said district shall have five trustees, all of whom shall be resident freeholders, and any three of whom shall constitute a quorum for the transaction of business. On the first Tuesday in May next, after the passage of this act, at seven o'clock in the afternoon, the legal voters of said consolidated district shall assemble at the court-house in the village of Malone, and organize a school district meeting, by appointing a moderator to preside at said meeting, and a clerk to keep the minutes of its proceedings, and shall then proceed to elect five trustees, a clerk, librarian and collector of said district, in the manner prescribed by law for the election of officers of school districts. The term of office of the clerk, librarian and collector of said district shall be one year, and those first elected, as above provided, shall hold office for one year from the next annual meeting in said district; and the term of office of the trustees of said district, who shall be elected after the first election, shall be five years. The said trustees elected at said first election shall determine by lot their respective terms of office, so that one shall serve one year, a second two years, a third three years, a fourth four years, and a fifth five years, from the next annual meeting in said district. There shall be elected in each year after the present, at the annual district meeting in said district, one trustee to supply the place of the trustee whose term of office will then expire. Vacancies in any of the offices in said district shall be supplied as provided by law for filling vacancies in such offices in school districts. And said trustees shall possess all the powers, and be subject to all the duties in respect to said district, that the trustees of school districts possess and are subject to, and to such other powers and duties as are conferred or imposed by this act, or may be conferred or imposed by law. The said meeting hereby directed to be held shall fix the time for holding the annual meeting in said district.

§ 3. The several school-houses, and all school district property belonging to the said several districts hereby consolidated, shall form, and after the passage of this act be, the property of the said consolidated district, to be held, used and disposed of as the like kind of property may be held, used and disposed of by other school districts.

§ 4. The said several school-houses, and such other as may from time to time be hired, purchased or erected in said district for that purpose, may be used for primary schools in said district, and the said district may, in the mode prescribed by law for hiring, erecting or purchasing school-houses, hire, purchase or erect, at suitable and convenient points in said district, school-houses for primary schools, and a school-house for a central school, for instruction in the higher grades of the English and common branches hereinafter prescribed, upon sites to be hired or purchased in the mode prescribed by law.

§ 5. The said schools shall be wholly supported by the moneys appropriated to said district, and by tax upon the taxable property in said district; and the said district shall receive its due pupil and library apportionments, according to the number of persons in said district over four years and under twenty-one years of age, authorized by law to be enumerated and reported with those forming the basis of the apportionment of public moneys, to said district, and district quotas according to section three, chapter one hundred and eighty of the Laws of eighteen hundred and fifty-six; and all moneys apportioned or apportionable to the said several districts by this act consolidated, upon reports already made by the trustees of said districts, but not yet paid, shall be paid to the trustees of said consolidated district; and the said consolidated district shall draw for the year eighteen hundred and fifty-eight its due pupil and library apportionments, according to the number of pupils in said district as aforesaid, without regard to the length of time that a school

shall have been kept in said district by a qualified teacher, in said year eighteen hundred and fifty-eight, and from district quotas for said year.

§ 6. The legal voters of said district, at said meeting hereby authorized, without any other notice than the publication of this act in the several newspapers published in the village of Malone, at least one week before the said meeting, and at any annual, special or adjourned meeting legally held, after such notice of any such annual, special or adjourned meeting, and of its objects, as is by law required, may vote to raise such sums of money as they may deem expedient for hiring or purchasing school-houses or sites for school-houses, and erecting and repairing school-houses, and for hiring and paying teachers, and purchasing maps, charts, globes and books, and providing fuel, and erecting and maintaining out-buildings, and inclosing and improving the grounds connected with the school-houses in said district, and defraying the contingent expenses of said schools. But no more than one thousand dollars shall be raised by taxation in any one year, over and above the sums necessary to be raised for the payment of teachers' wages.

§ 7. The trustees of said consolidated district are hereby authorized and empowered to make such by-laws and regulations as they may deem necessary to secure the prosperity, order and government of said schools, and to divide the same into primary and higher departments, and regulate the transfer of scholars from one department to another, and provide suitable instructors in each department, and direct what text books shall be used in the same; but no higher or other branches than reading, spelling, penmanship, geography, English grammar, arithmetic, history, English composition, and declamation, shall be taught in said schools; and no person not a resident of said district, and authorized to be enumerated and reported with those forming the basis of the apportionment of public moneys to said district, shall be permitted to attend any of the said schools.

§ 8. The said schools shall be free to all persons in said district authorized to be enumerated and reported with those forming the basis of the apportionment of public moneys to said district, and no charge for tuition shall be made against any such persons, or against their parents, guardians or employers, either by rate bill or otherwise.

§ 9. The trustees of said consolidated school district are authorized from time to time to make arrangements with the trustees or principal of the Franklin academy, in the village of Malone, to teach, in any or all of the several branches of education herein prescribed, any number of the scholars in said school district, on such terms and conditions as they shall deem expedient.

§ 10. The said district, and the officers thereof, and the schools therein, shall, in all respects, be subject to the jurisdiction and control of the commissioners of common schools of the district in which the said consolidated district is located, and to the State Superintendent of Common Schools, the same as other school districts, and the officers thereof, and the schools therein, and all the general laws and regulations of this State in relation to common schools, shall apply to the said district and its officers and schools, except as herein otherwise provided.

[*Chap. 7, Laws of 1867, p. 32, vol. 1.*]

SECTION 1. The five existing trustees of the village school district of the town of Malone, associated with five trustees of the corporation of Franklin academy, in said village, and their respective successors in office, shall constitute a board of education for said village school district.

§ 2. Upon the passage of this act the board of trustees of said Franklin academy shall elect five of its members, who shall be residents of said village school district, who shall be associated with said school district trustees, to form the board of education established by the foregoing section. Said academy trustees, so elected, shall determine by lot their respective terms of office, so that one shall serve one year, one two years, one three years, one four years, and one five years, and in each case the period of service shall commence and end with that of the trustees of said village school district. After such first election the said board of trustees of Franklin academy shall, at the time of the annual meeting of said village school district, elect one of its members to supply the place of the trustee whose term of office shall then expire. The trustees of said village school district shall continue to be elected as provided by section two of chapter three hundred and seventy of the Laws of eighteen hundred and fifty-eight.

§ 3. The said board of education, when it shall be duly organized under the foregoing provisions, shall have the care, management and control of all the schools in said village school district, and also of the academy therein: but nothing in this act shall be held in any wise to affect or impair the separate corporate existence of said academy, or any rights or privileges appertaining to it, as such corporation, except as herein expressly provided. And generally, except as qualified by this act, the said board of education shall have, possess and exercise all the powers and privileges conferred upon such boards, in school districts, other than those whose limits correspond with those of any city or incorporated village, by title nine of chapter five hundred and fifty-five of the Laws of eighteen hundred and sixty-four. The said district schools shall be free only to those persons residing in the district, authorized to be enumerated and reported with those forming the basis for the apportionment of public money to said district. To all others, as well as to all attending the academy, whether from within or from without the limits of said district, a just and remunerative rate of tuition shall be charged, which rate, from time to time, shall be fixed by said board of education.

§ 4. Except as modified by the foregoing provisions, so much of title nine, of chapter five hundred and fifty-five of the Laws of eighteen hundred and sixty-four, as relates to school districts, other than those whose limits correspond with those of any city or incorporated

village, is hereby extended and made applicable to "the village school district of the town of Malone."

§ 5. So much of chapter three hundred and seventy, of the laws of eighteen hundred and fifty-eight, being "An act to consolidate school districts one, fourteen, fifteen and twenty-three, in the town of Malone, in the county of Franklin," as conflicts or is inconsistent with the foregoing provisions is hereby repealed.

## MEDINA.

[*Laws of 1849, chap. 286, as amended by chap. 331, Laws of 1850.*]

SECTION 1. There shall hereafter be elected in school district number twelve, formed partly out of the town of Ridgeway and partly out of the town of Shelby, in the county of Orleans, and lying principally within the village of Medina, in the manner now provided by law, three trustees, who shall respectively hold their offices three years. Christopher Whaley, Silas M. Burroughs, John Ryan, Daniel Starr, Isaac W. Swan and Archibald Servoss are hereby appointed trustees of said district, and shall respectively hold said office as follows, namely: The term of office of Christopher Whaley and Silas M. Burroughs shall expire at the same time that the term of office of Roswell Starr, as trustee of said district, shall expire; the term of office of John Ryan and Daniel Starr shall expire at the same time that the term of office of Isaac K. Burroughs, as trustee of said district, shall expire; and the term of office of Isaac W. Swan and Archibald Servoss shall expire at the same time that the term of office of Nathan Bancroft, as trustee of said district, shall expire.

§ 2. The trustees of said district, and their successors in office, shall constitute a board of education for said district; and, for the purposes of this act, in addition to the present powers and duties of trustees, are hereby constituted a body politic and corporate, by the name and style of "the board of education of the village of Medina;" and said corporation shall have power to establish and organize a classical school in said village, to be known by the name of "the Medina academy," and such classical school shall be subject to all laws and regulations applicable to other incorporated academies of this State, and shall be entitled to share in the distribution of the moneys of the literature fund, upon the same terms as other academies of this State; and the Regents of the University shall recognize said academy as such, as soon as the required sum of money shall be expended in buildings, and competent teachers employed therein.

§ 3. Said board of education shall appoint one of their number president of said board, who shall preside at the meetings of said board when present; when absent a president pro tempore shall be appointed in his stead. They shall also appoint one of their number secretary, who shall record all the acts, doings, and resolutions of said board; and in the absence of the secretary a secretary pro tempore shall be appointed to discharge such duties. They shall also appoint a collector, librarian and treasurer of said district, who shall respectively hold their offices one year from their appointment, and until others are appointed in their places, unless sooner removed by said board; such collector, librarian and treasurer shall each, within ten days after notice of their appointment in writing, and before entering upon the duties of their office, execute and deliver to said board of education a bond, in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and said board of education shall thereupon make an appointment to supply such vacancy.

§ 4. The said board of education shall have power to fill any vacancy which may happen by reason of the death or removal from the said district of any member of said board, and the officer so appointed shall hold his office for the unexpired time of the person to supply whose place he shall be so appointed.

§ 5. Said board of education shall possess all the powers and be subject to all the duties, in respect to said district, that the trustees of common schools now possess or are subject to, and such other powers and duties as are given or imposed by this act.

§ 6. The taxable inhabitants of said district, at any annual, special or adjourned meeting, legally held, may vote to raise such sum of money as they shall deem expedient for the purpose of purchasing a site and building a school-house in said district, or for the purpose of purchasing any suitable building for such purpose, and direct the trustees to cause the same to be levied and raised by installments, and make out a tax for the collection of the same as often as such installments shall become due; and the legal voters at any such meeting are authorized to fix the compensation for collecting and paying over to the said board of education the amount so levied.

§ 7. The inhabitants of said district shall have no power to rescind the vote to raise such sum of money, at any subsequent meeting, unless the same be done within ten days thereafter; nor shall they have power to reduce the amount of the same after the expiration of ten days from the time the tax was first levied, but may remit such sum as shall remain unappropriated after paying for the site and erection of the house or purchase of suitable building.

§ 8. The said board of education are hereby authorized to obtain by loan the whole or any part of the money legally voted by said district, and secure the payment of the same by their official bond.

§ 9. The Comptroller of this State is hereby authorized and directed to loan to the said board of education such sum as the said board of education shall certify to said Comptroller to have been voted by the inhabitants of said district, in pursuance of this act, not exceed-

ing the sum of five thousand dollars, out of the moneys in the treasury belonging to the capital of the common school fund, and for the purpose of purchasing a site and erecting or purchasing a suitable building for a school-house in said district; and the money when loaned shall be charged upon the books of the Comptroller to said district, and the same shall be paid over to said board of education, to be applied by them for the purpose of purchasing a site and erecting or purchasing a school-house for said district.

§ 10. The sum so loaned shall be paid to the Comptroller of this State, in annual installments thereafter, as determined by the vote of said district raising such sum of money, with annual interest thereon.

§ 11. The said board of education are hereby authorized and empowered to sell at public auction, to the highest bidder, the school-house and site thereof belonging to said district, by giving public notice, to be posted in ten public places in said district ten days previous to such sale, and apply the proceeds arising from such sale toward purchasing a site and erecting a school-house in said district, or to such other purpose as said district shall direct; such sale may be made upon such terms of credit as said board of education shall determine upon, and a bond and mortgage taken by said board for the whole or any part of the purchase-money or price for which said site and house may be sold, and such bond and mortgage may be sold and assigned by said board at par, for money to be applied by them as herein provided.

§ 12. The said board of education are hereby authorized and empowered to make such by-laws and regulations as they may deem necessary to secure the prosperity, order and government of said school, and divide the same into primary and higher departments, and regulate the transfer of scholars from one department to the other, and provide suitable instructors for each department, direct what text books shall be used in the same, purchase fuel and other necessities for the use of the school or schools in said district, and all contracts made by them in their official capacity shall be binding upon them and their successors in office; to fix and regulate the terms of tuition fees in said primary and other higher branches in said school or schools; to sue for and collect in their corporate name any sum of money due to said district; to receive and apply to the uses of said school or schools, or any department thereof, any gift, legacy, bequest or annuities given or bequeathed to said board, and apply the same according to the instructions of the donor or testator; to take and hold any real estate given or bequeathed to said board for the purposes of said school or schools, or any department thereof, and apply the same, or the interest or proceeds thereof, according to the terms and instructions of the donor or testator; to have in all respects the superintendence, supervision, management and control of said school or schools, or any department thereof, and to hire, pay and discharge any teacher or teachers employed by them in said school or department thereof.

§ 13. Said board of education shall in all respects be subject to the restrictions and control of the superintendents of common schools of the town, county and State, in the same manner as the common schools in this State are subject.

§ 14. Said board of education shall have power and are hereby authorized to receive into said academy, and cause to be instructed therein, any pupil or pupils residing in or out of said district, and to regulate and establish the terms of tuition fees of such resident or non-resident pupils; and said board of education shall have power to regulate the tuition fees and rates of charges for instruction in the higher English and classical departments of said academy, and shall have power to make such application of the money raised for the support of common schools in said district, for the payment of teachers' wages, as said board shall determine, and may divide and apportion the same, in such manner as said board shall deem best, to pay the salaries of teachers employed in said academy, or the elementary English schools connected therewith or maintained in said district under their supervision. The rates of tuition in the elementary English branches, in the schools maintained in said district, shall be subject to the general laws relating to common schools; and, after applying such portion of the money received in said district, as said board shall determine, toward the support of such elementary English departments, such sum, not to be less than one-half of all the moneys received in said district for the support of common schools therein, the additional sum required to pay teachers' wages and provide fuel and other contingent expenses necessary to the support of such elementary schools, shall be estimated, assessed, collected and applied in the manner provided in chapters one hundred and forty and four hundred and four of the Session Laws of eighteen hundred and forty-nine, or in such other manner as shall be hereafter provided by law for the support of common schools.

§ 15. All moneys raised in said district for the purposes of said school, and all moneys to be received by such district from the common school fund or other source, shall be annually paid to the said board of education, and be applied by them for the uses of said school or schools according to law.

§ 16. The members of said board of education, before receiving any moneys belonging to said district, shall severally execute to the town superintendent of common schools of the town of Ridgeway their separate bonds, with two sufficient sureties, to be approved by said town superintendent, in a penalty at least double the amount to be expended by them for the benefit of said school during the next ensuing year, conditioned that such trustee giving such bond will faithfully account for the expenditure of all moneys he shall receive for said district, and pay over the balance remaining in his hands at the time of the expiration of his office to the other trustees; and the district at any legal meeting thereof may require the penalty of such bond to be increased, or additional security to be given by either or all the trustees, if they shall deem the same insufficient; and any trustee, treasurer of said district, or member of said board, who shall apply any moneys belonging to said district to his own use, shall be deemed guilty of embezzlement.

## MENTZ.

[*Chap. 305, Laws of 1857, p. 627, vol. 1, as amended by chap. 97, Laws of 1860, p. 169.*]

SECTION 1. All that territory embraced in school districts numbers six and fifteen, Mentz, Cayuga county, and so much of lot number forty-eight, Mentz, as lies south of the north line of the New York Central Railroad lands, and east of the Owasco creek, is hereby consolidated and shall hereafter constitute one permanent school district, and shall not be subject to alteration except by the Legislature of the State of New York, to be hereafter known by the name of "Port Byron free school district."

§ 2. David B. Smith, Amasa K. King, James D. Button, Finlay M. King, Alfred Mead, Jacob D. Schoonmaker, William D. Osborn, George Randall and William A. Halsey, are hereby appointed trustees of said district, to be divided by lot at their first meeting into three classes, to be numbered one, two and three, and hold their offices as follows: Class number one until the first annual meeting, which shall be held on the first Tuesday in May, eighteen hundred and fifty-eight; class number two until the next annual meeting thereafter, and class number three until the next annual meeting thereafter; and at each annual meeting there shall be elected three trustees to supply the places of those whose terms of office shall expire, and all those elected at the annual meetings shall each hold their offices for three years unless elected to fill a vacancy. If at any annual meeting there should be a failure to elect, those whose terms would expire shall hold their offices until others are elected in their stead. Notice of the annual or special meetings shall be given by posting the same in three public places in the said district, and by publishing the same in a newspaper, if one is printed in said district.

§ 3. The trustees of said district, and their successors in office, shall constitute a board of education for said school district and for the purposes of this act, in addition to the duties of trustees, are hereby constituted a corporation by the name of "the board of education of the village of Port Byron;" and the said board of education shall have power to establish and organize a classical school in the said village, to be known by the name of the Port Byron academy, and such classical school shall be subject to all laws and regulations applicable to other incorporated academies of this State, and shall be entitled to share in the distribution of the literature fund upon the same terms as other academies of this State; and the Regents of the University shall recognize said academy as such as soon as the required sum of money shall be expended in buildings and apparatus, and competent teachers employed therein.

§ 4. The board of education shall appoint one of their number president of the said board, who shall preside at the meetings of the board when present, and when absent a president pro tempore shall be appointed in his stead. They shall also appoint one of their number secretary, who shall record all the acts, doings and resolutions of said board, and in his absence a secretary pro tempore shall be appointed to discharge such duties. They shall also appoint a collector and treasurer, who shall each hold their offices for one year from their appointment and until others are appointed in their places, unless sooner removed by the said board. Such collector, librarian and treasurer shall each within ten days after notice in writing has been received of their appointment, and before entering upon the duties of their offices, execute and deliver to said board of education a bond, in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office, and unless such bond shall be executed and delivered within ten days after such notice such office shall become vacated and said board may fill such vacancy.

§ 5. The said board of education shall have power:

1. To pass such by-laws as they may deem proper for the regulation and exercise of their lawful business and powers;

2. To fill any vacancy which may happen in said board by reason of death, removal or refusal to serve of any member or officer of said board, and the person so appointed to fill such vacancy shall hold his office until the next election of trustees, as by this act provided;

3. To remove any member of their board or any officer of their appointment for official misconduct; but a written copy of all charges for such misconduct shall be served upon him at least ten days before the time appointed for a hearing, and he shall be allowed a full and fair opportunity to refute such charges before removal;

4. To take charge and possession of the school-houses, sites and lots, furniture, books, apparatus and all the school property within their district; and the title of the same shall be vested in the said board of education, and the same shall not be subject to taxation for any purpose whatever;

5. To take and hold for the use of said schools or any department of the same any real estate transferred to it by gift, grant, bequest or devise, or any gift, legacy or annuity of whatever kind, given or bequeathed to the said board, and apply the sum or the interest or proceeds thereof according to the instructions of the donor or testator;

6. To receive into the said schools any pupils residing out of the said district, and to regulate and establish the tuition fees of such non-resident pupils in the several departments of said schools, and also those of scholars residing in the said district and attending the said academy; to regulate the transfer from the primary to the academical departments, and from class to class, of all scholars as their degree of scholarship may warrant; to direct what text books shall be used therein; to provide fuel, furniture, apparatus and other necessities for the use of the said schools, and sue for and collect all debts and demands due to said district in the corporate name of said board of education, and all contracts made by the members of said board in their official capacity shall be binding on them and their successors in office;

7. To contract with and employ teachers competent in the several departments of the schools; to remove them at any time for neglect of duty, immoral conduct or for any other cause by the said board deemed sufficient, and to pay the wages and salaries of such teachers and instructors out of the moneys appropriated for that purpose;

8. To possess all the powers, privileges and immunities and be subject to all the duties in respect to the common schools which the trustees of the common schools now possess and are now subject to, not inconsistent with this act, and to enjoy all the immunities and privileges now enjoyed by the academies of this State;

9. The board of education are hereby authorized to convey the title of the old sites and school-houses to purchasers, and also purchase new sites and build school-houses and other necessary buildings, and purchase the necessary apparatus for the said schools, and to fence and improve the grounds thereof; provided, that it shall require the votes of seven members of the board of education, to be given and recorded by ayes and noes, to fix or establish any site for the building or buildings of said school.

§ 6. It shall be the duty of said board to have reference in all their expenditures and contracts to the amount of moneys which shall be appropriated or subject to their order or drafts during the current year, and not exceed that amount, and the said board shall apply all the public moneys appropriated to the said district to the departments below the academical, and all moneys from the literature fund or otherwise appropriated for the support of the academical department, to the academy.

§ 7. The board of education shall cause to be levied and collected upon the taxable property of said district, in the manner provided by law for the assessment and collection of school district taxes in the several towns of this State, a sum which, together with the amount received from the common school fund, shall be sufficient to pay all teachers' and instructors' salaries and wages who are employed in said schools below the academical department. The fuel and other necessary contingent expenses of the school shall be raised by a tax on the taxable property of said district, as is now provided for, and all warrants for the collection of taxes in the said district shall be issued under the hand and seal of the president and secretary or a majority of said board. The moneys received from the literature fund shall be applied to the support of the academy, and the tuition fees of non-resident scholars in the primary departments may be applied in such manner as the board of education shall direct, either to the support of the primary or academical departments of said school.

§ 8. All moneys raised in the said district for the purposes of the schools, and all moneys to be received by such district from the common school fund or other sources, shall be paid to the treasurer of the district, to be paid by him on the warrant of the said board of education, and to be applied by them for the use of said schools, according to the provisions of this act.

§ 9. The taxable inhabitants of the said district, at any annual, special or adjourned meeting, legally held, may vote to raise such sum of money as they may deem expedient, not exceeding eight thousand dollars, for the purpose of purchasing a site and building a school-house or houses in said district, and furnishing the same with necessary furniture, maps, globes, and other suitable apparatus, and direct the trustees to cause the same to be levied and collected by tax upon the real and personal estate in the said district which shall be liable to taxation for the ordinary taxes of town and county charges, by such installments as the legal voters may direct, and make out a tax for the same as often as such installments shall become due.

§ 10. The inhabitants of said district shall have no power to rescind the vote to raise such sum of money at any subsequent meeting, unless the same be done within ten days thereafter; nor shall they have power to reduce the same after the expiration of ten days from the time that such sum was first voted to be raised; but they may remit such sum as shall remain unappropriated after paying for the site and erection of the buildings, and fencing and filling the grounds.

§ 11. The said board of education are hereby authorized to obtain by loan the whole or any part of the money legally voted by the said district, and secure the payment of the same by their official bond.

§ 12. The Comptroller of this State is hereby directed and authorized to loan to the board of education of the village of Port Byron, the sum of five thousand dollars, out of the common school fund, and receive their bond in their official capacity, secured by mortgage on the site, which must be unincumbered, and by such other security as the Comptroller may deem adequate for the repayment of the same in six annual payments, with annual interest at seven per cent on the sum unpaid. The sum so loaned shall be expended by the said board for the purchase of a site in the village of Port Byron, and the erection of school buildings thereon.

§ 13. There shall be levied and collected by the board of education hereby created, upon the real and personal estate of the Port Byron free school district, in the same manner as other village, town and county taxes are levied and collected, the sum of five thousand dollars, in six equal annual installments, the first installment to be levied and collected in the year eighteen hundred and sixty-four, and the residue in five annual installments thereafter, together with the interest annually upon the whole sum unpaid, which shall be paid to the Comptroller of this State, in satisfaction of said loan. [*As amended by chapter 97, Laws of 1860, page 169.*]

§ 14. The loan mentioned in the eleventh and twelfth sections of this act, shall not be made unless the same shall be authorized by a vote of the electors in said district entitled to vote therein for school taxes, at an annual or special meeting in said district.

§ 15. In making out a tax list for the collection of taxes in said district, the valuation of taxable property shall be ascertained, so far as possible, from the last assessment roll of the town of Mentz.



§ 16. The said board of education are hereby authorized and empowered to sell at public auction to the highest bidder, the school-houses and sites belonging to the said districts, by giving public notice, to be posted in ten public places in the said district, ten days previous to such sale, and the proceeds of such sale shall be used toward purchasing a site, erecting the necessary school buildings, fencing and improving the grounds, or to such other purpose, for the benefit of the said schools, as the district shall direct; such sale may be made on such terms of credit as the said board of education shall determine, and a bond and mortgage taken, by the said board for the whole or any part of the purchase-money, and such bond and mortgage may be sold and assigned by the said board at par, for money, to be applied by them as herein provided.

§ 17. The members of the board of education, before receiving any moneys belonging to said district, shall severally execute to the president of the village of Port Byron their separate bonds, with two sufficient sureties to be approved by said president, in a penalty at least double the amount to be expended by them for the benefit of said district the next ensuing year, conditioned that such trustee giving such bond, will faithfully account for the expenditure of all moneys he shall receive for said district, and pay over the balance remaining in his hands to the other trustees at the expiration of his term of office; and any trustee or treasurer who shall apply any moneys belonging to said district to his own use shall be deemed guilty of fraud or embezzlement.

§ 18. This act shall take effect on the first day of April, eighteen hundred and fifty-seven.

## MIDDLETOWN.

[Chap. 431, Laws of 1867, p. 1024, vol. 1.]

SECTION 1. Every district or common school located in the village of Middletown, and every school which may hereafter be located in said village under the provisions of this act, shall be free to all children between the ages of four and twenty-one years, residing in said village.

§ 2. All that part of the town of Walkill included within the corporate limits of the village of Middletown shall hereafter constitute one school district. There shall be elected in said district, as soon after the passage of this act as the trustees of the village can order an election for that purpose, after giving two weeks' notice in two papers of said village, of the time and place of holding such election, nine persons, who shall constitute and be designated "the board of education of the village of Middletown," which board shall be a corporate body in relation to all the powers conferred upon them by this act. The term of office of three of the members of said board shall expire on the first Tuesday in April, eighteen hundred and sixty-eight. The term of office of three others of the members of said board shall expire on the first Tuesday in April, eighteen hundred and sixty-nine, and the term of office of the remaining three shall expire on the first Tuesday in April, eighteen hundred and seventy. The term of office of the several members of said board shall be determined by lot at the first meeting of the said board after their election. And there shall be elected annually thereafter, at the time of the election of officers of the village of Middletown, three members of said board of education.

§ 3. The title of the school-houses, sites, lots, furniture, books, apparatus and appurtenances, and all other school property in said village, in this act mentioned, shall be vested in said board of education, and such property shall not be subject to taxation for any purpose. And the said board of education, in its corporate capacity, may take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest, or devise, for the use of the schools in said village, established by authority of this act.

§ 4. The first meeting of the board of education shall be on the Tuesday next after their election, and the annual meeting of the board thereafter shall be on the second Tuesday in April. A majority of the board shall constitute a quorum, and be competent to transact any business of said board. The said board shall elect one of their number president, and whenever he shall be absent a president pro tempore may be appointed. The members of the board shall receive no compensation for their services. The said board shall appoint a clerk, who shall hold his office during the pleasure of the board, and whose compensation shall be fixed by the board. The said clerk shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. Such record, or a transcript thereof, certified by the president and clerk, shall be received in all courts as prima facie evidence of facts therein set forth.

§ 5. The trustees of said village shall have the power, and it shall be their duty, to raise, from time to time, by tax to be levied upon all the real and personal property in said village which shall be liable for the ordinary village taxes, such sum or sums of money as the board of education shall certify to the said trustees to be necessary for any or all of the following purposes:

1. To purchase, lease, or improve sites for school-houses;
2. To build, purchase, lease, enlarge, alter, improve and repair school-houses and appurtenances;
3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages;
4. To purchase fuel and pay the contingent expenses of the schools under their supervision, and the expenses of the libraries of said schools;

5. To pay the wages of teachers, after applying to that purpose all the public school moneys and all the other moneys received by said board, or that shall be under their control, and which may by law be appropriated and provided for that object; provided that no moneys shall be raised for the purchasing of any site, or the erecting of any school-house, or the enlarging of any school building already erected, unless the consent of a majority of the taxable inhabitants of said village, authorized to vote, and voting at an annual or special meeting called for that purpose, be first obtained;

6. The trustees of said village are hereby authorized and directed to raise by loan, in anticipation of the taxes, the moneys to be levied and collected as herein provided. The taxes to be levied as aforesaid, and collected by virtue of this act, shall be collected at the same time and in the same manner as other village taxes.

§ 6. All moneys to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to and provided for the schools of said village, shall be paid to the treasurer of the village of Middletown, who, together with the sureties upon his official bond, shall be accountable therefor, in the same manner as for other moneys of said village, and who shall be liable to the like penalties for any official misconduct in relation to school as to other moneys of said village. Such moneys shall be deposited with such treasurer to the credit of said board of education, and shall be paid only by order of said board on drafts drawn by the president and countersigned by the clerk, payable to the order of the person or persons entitled to receive such moneys; and said treasurer shall keep the funds received by him under this act separate and distinct from any other funds.

§ 7. The said board shall have the power and it shall be their duty:

1. To establish and organize in said village such and so many free schools as said board shall deem requisite and expedient, and to change or discontinue the same in their discretion.

2. To hire school-houses or rooms for school purposes;

3. To alter, improve and repair school-houses and appurtenances, as they may deem advisable;

4. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages, and to defray the necessary expenses attending the same;

5. To have the custody and safe keeping of the school buildings, out-houses, books, furniture and appendages, and to see that the ordinances in relation thereto are enforced;

6. To contract with, license and employ all necessary teachers, and at their pleasure to remove them;

7. To pay the wages of such teachers out of the moneys appropriated and provided by law for that purpose;

8. To defray the necessary contingent expenses of the board, including an annual salary to the clerk; provided the account of such expenses shall be first audited and allowed by the said board of education;

9. To expend all moneys raised by virtue of this act for building school-houses, purchasing sites, and other purposes for which the same may be raised, in such manner as they may deem proper;

10. To have the entire supervision and management of the schools in said village, established under and by virtue of the provisions of this act; and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils and their transfer from one school to another, for their advancement from class to class, as their degree of scholarship may warrant, and generally for the promotion of the good order and prosperity of said schools;

11. To sell and dispose of any school buildings, lots or sites, whenever in the opinion of the board it may be advisable;

12. To determine and certify to the trustees of the village, on or before the first day of March in each year, the sums of money in their opinion necessary to be raised, under the provisions of this act, for the year commencing on the first day of April following, specifying the purposes for which the same are required.

§ 8. The board of education shall have a regular meeting at least once in each quarter, and shall appoint at such meetings one or more committees, each to consist of not less than two of their members to visit all the schools under their supervision in said village, and such committee shall visit all such schools at least twice during each school term.

§ 9. The said board of education shall have power to allow the children of persons not resident within the village to attend any of the schools of said village under the control of said board upon such terms as said board shall by resolution prescribe.

§ 10. The said board of education shall be trustees of the school library or libraries in said village, and all the provisions of law relative to district school libraries shall apply to said board. They shall also be vested with the same discretion as to the disposition of the moneys appropriated by law for the purchase of libraries as is conferred upon the inhabitants of school districts. It shall be the duty of said board, in their discretion, to provide rooms for the school libraries of said village. The clerk of the board shall be the general librarian. The board shall also appoint one or more librarians to have the care of the books, and to superintend the letting out and return thereof. The several local librarians shall from time to time inform the general librarian of the condition of their libraries, and the said board or the general librarian, under the direction of said board, may make all purchases of books for the libraries of such schools, and exchange or cause to be repaired the damaged books belonging thereto.

§ 11. It shall be the duty of said board, at least twenty days before the annual charter election in each year, to prepare and make to the trustees of the village a correct report of the receipts and disbursements of moneys under the provisions of this act, during the preceding year, in which accounts shall be stated under appropriate heads:

1. The moneys raised by the trustees of the village under the provisions of this act;
2. The school moneys received by the treasurer of the village from the county treasurer;
3. The moneys received by the board under the third section of this act;
4. All other moneys received by the treasurer subject to the order of the board;
5. The manner in which such money shall have been expended, specifying the purpose for which each amount was paid. And the said board shall cause such report to be published in one or more of the newspapers of said village ten days before such election.

§ 12. The trustees of said village shall have the power, and it shall be their duty, to pass such ordinances and regulations as the said board of education may report as necessary and proper, for the protection, safe keeping, care and preservation of the school buildings, lots, sites, appurtenances and appendages, libraries, and all property belonging to or connected with the schools in said village, and to impose proper penalties for the violation of the same, subject to the restrictions and limitations contained in the act to incorporate the said village, and all such penalties shall be collected in the same manner as the penalties for the violation of other village ordinances, and when collected shall be paid to the treasurer of the village, and be subject to the order of the board of education, in the same manner as other moneys raised pursuant to the provisions of this act.

§ 13. It shall be the duty of the trustees, within fifteen days after receiving the certificate of the board of education required by the fifth section of this act, of the sums necessary or proper to be raised under the fifth section of this act, to certify to said board of education that the amount will be raised by them for the year commencing on the first of April thereafter, for the purpose mentioned in said fifth section, distinguishing between the amount to be raised for teachers' wages and contingent expenses, and the amount to be raised for the repair of school-houses, which amounts shall be subject to the disposal of the board of education.

§ 14. It shall be the duty of the trustees of district number three, in the town of Wallkill, within three months from the passage of this act, to transfer and convey to said board of education, all school-houses, sites, lots, and all other school property of whatever name and description, and to place in the care of the board of education all school-district records, account books, vouchers, contracts, papers, and all other school property; and the said school officers of the said district shall continue in office until the unfinished business of said district shall have been finally closed up, not exceeding three months after the passage of this act, with all the power and duties now by law imposed upon them.

§ 15. The said board of education shall, annually, make a report to the school commissioner of the second assembly district of Orange county, in the form and within the time required by law, of the trustees of common school districts. And it shall be the duty of the school commissioners of Orange county to apportion for the use of the board of education of Middletown, such portions of the school and library moneys as it shall be entitled to by its annual report, in the same manner as such moneys are apportioned to towns, certifying the same to the county treasurer of Orange county. The said county treasurer of Orange county shall pay over to the treasurer of the village of Middletown, for the use of the board of education created by this act, such proportion of the school and library moneys apportioned to the said county of Orange, by the Superintendent of Public Instruction for teachers' wages and libraries, as said school commissioners shall certify to be the just proportion of said board of education, in the same manner as school and library moneys are paid to supervisors of towns.

#### MILTON AND BALLSTON, DISTRICT No. 12.

[Chap. 228, Laws of 1848, p. 337.]

SECTION 1. The trustees of school district number twelve in the towns of Milton and Ballston, in the county of Saratoga, are hereby directed and empowered to set apart from the school moneys appropriated to such district an amount equal to that which is drawn by the enumeration of children under the age of sixteen, who work in any manufacturing establishment in said district, for the purpose of establishing an evening school.

§ 2. The trustees of said district are hereby directed to employ a suitable teacher, who shall commence an evening school in the district school-house in the aforesaid district on the first Monday evening after the twentieth of September in each year, and the trustees are hereby authorized and empowered to levy and collect in the usual manner school bills are now collected by law, a sum not exceeding fifty cents for every child attending the school for each quarter of thirteen weeks. The trustees shall not continue such school for a longer time than two quarters of thirteen weeks each, and no longer than sufficient money to pay the expense of the same can be collected under the provisions of this act.

#### MORRISANIA.

[Chap. 356, Laws of 1867, p. 788, vol. 1.]

SECTION 1. The town of Morrisania, in the county of Westchester, shall form a permanent school district.

§ 2. The said district shall be under the direction of a board, to be styled the board of education of the school district of the town of Morrisania, which shall be a corporate body

in relation to all the powers and duties conferred upon them by this act, and shall possess the general powers and be subject to the liabilities and restrictions imposed by the eighteenth chapter of the first part of the Revised Statutes. They shall possess all the powers and be subject to all the duties in respect to said district that the trustees of common schools now possess or are subject to, together with such other powers and duties as are given and imposed by this act. The said board shall consist of nine members, a majority of whom shall constitute a quorum for the transaction of business. The said board of education shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by the secretary or any other member of the board, as often as necessary, by giving personal notice to each member thereof, or causing a written or printed notice to be left at his place of residence, at least twenty-four hours before the hour of meeting. And if any member of the said board shall refuse or neglect to attend any three successive stated meetings of the board, and if no satisfactory cause of his non-attendance be shown, the board may declare his office vacant. No member of said board shall receive any pay or compensation for his services. It shall not be lawful for any member of said board to become a contractor for building, or making any improvement or repairs authorized by this act, or be in any manner, directly or indirectly interested, either as principal, partner or surety, in any such contract. All contracts made in violation of this provision shall be absolutely void, and the person violating shall forfeit the sum of five hundred dollars, to be prosecuted for and received and used by said board for school purposes.

§ 3. There shall be elected, at each annual district meeting, three members of said board of education, who shall hold office for three years; and also three persons as inspectors of election for the ensuing year, all of whom shall be citizens, and taxable inhabitants of the district; said election shall be by ballot; notice thereof shall be given two weeks previous, by the board of education, in any two local newspapers having the largest circulation. The election shall be held and conducted, the votes shall be canvassed, and the result of the election shall be determined, in the same manner as for town officers.

§ 4. The said board of education shall, at their next annual meeting, choose one of their number for president, one for secretary, and one for treasurer, who shall hold office for one year. In the absence of either of such officers at any regular meeting of the board, a president or secretary may be appointed for the time being; and election for said officers shall be held thereafter on the same day of the same week of the same month in which the first election was held. If from any cause the election shall not take place on the day appointed, it shall be held within one week thereafter; until such election, the old officers shall continue to perform their respective functions. The treasurer shall, within ten days after receiving notice of his appointment, execute and deliver to the said board of education a bond in such penalty and with such sureties as they may require. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and said board may make an appointment to supply such vacancy. Said board may appoint a clerk, whose compensation shall be fixed by them, and who shall hold office for one year. The said clerk shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The said record, or transcript thereof, certified by the president and clerk, shall be received in all courts as prima facie evidence of the facts therein set forth.

§ 5. The said board of education shall call an annual district meeting on the first Monday in June, and shall submit thereto a full report, in writing, of their doings as such board, and shall state therein the number and condition of schools in said district under their charge, and the number of scholars attending the same, the studies pursued, the amount of moneys received from the State and from other sources, as well as the amount raised in the district for school purposes, the expenditure of the same, and all the particulars, in detail, relating to the schools in said district, which report shall, immediately after it is made, be printed in the newspapers published in the district, for two weeks consecutively.

§ 6. The said board of education are hereby authorized and directed to levy and collect by tax in each year, upon all the taxable property in said district, such sums as may be necessary, not exceeding in amount one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the town as taken from their last assessment roll, which sum shall be applied to the necessary current and contingent expenses of the schools in said district; and when in the opinion of said board it becomes necessary to build an additional school-house or school-houses in the district, or to enlarge those already built, they shall give public notice of at least fifteen days, of the site or sites selected for such purpose, and of the amount required for the purchase thereof, inclusive of the buildings, and of the cost of the furniture and necessary fixtures, and at the same time call a district meeting, to which the same is to be submitted, and if a majority of all the inhabitants entitled to vote at district meetings, present and voting at such meeting, shall approve of the site or sites and of the plans submitted, and of the amount proposed to be raised, then the said board may proceed to levy upon the taxable property of the district the amount required for such purpose, but said tax shall not in any one year exceed one per cent on the value of the taxable property of the district.

§ 7. If in the opinion of the board of education it shall be for the best interests of the district to raise by loan or by the issue of bonds the amount required for the purposes provided in the preceding section of this act, then it shall be lawful for said board to raise on certificates of loan or by the issue of bonds, a sum not exceeding the amount voted at a district meeting to be levied and assessed upon the taxable property of the district; said bonds and certificates of loan to be executed by said board in their official capacity, signed by the president and secretary. The bonds issued by the said board shall bear seven per

cent interest, payable semi-annually, and two thousand dollars of the principal of said bonds shall be payable one year from the date of their issue, and two thousand dollars of the principal shall be payable every year thereafter, until the whole amount is paid. And if a loan shall be made by said board for the purpose herein prescribed, two thousand dollars of the amount borrowed by said board shall be payable at the end of one year, and two thousand dollars every year thereafter, until the whole amount shall be paid.

§ 8. The said board of education, in addition to the other taxes which they are authorized by law to raise, are hereby authorized and required to assess upon the taxable property of said district, and cause to be collected, a sum of money sufficient to pay the principal and interest due upon any loan they may have made, or to pay the principal and interest of the bonds which they may have issued for the purposes provided in the sixth section of this act.

§ 9. The said board of education may make all necessary by-laws for their own government. Vacancies in the board occurring by resignation or any other cause, the same may be filled by the board until the next annual election, when such vacancies shall be filled in the same manner as those caused by expiration of term of office. The title of the school-houses, sites, lots, furniture, books, apparatus, and appurtenances, and all other school property in the said district, shall be, and the same is hereby vested in the said board of education; and the said board, in its corporate capacity, may take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest or devise, for the use of common schools in the said district. They shall have and possess, within the said district, all the rights, powers and authority of town superintendent of common schools. They shall have the entire control and management of all the common schools within the said district, and all the property belonging to the same. They shall require one of the members of the said board to visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that the regulations are rigidly adhered to. Said board shall have power to make all warrants for the collection of the taxes to be raised by them, returnable at sixty or ninety days, in their discretion, and to renew the same whenever it shall become necessary.

§ 10. All moneys to be received by virtue of this act, and all moneys by law appropriated to or provided for said district, shall be paid to the treasurer of said board, who, together with the sureties upon his official bond, shall be accountable to said board of education. Said treasurer shall not pay out any such money, except by resolution of said board, and upon an order drawn by the president, and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 11. The board of education shall have control and charge of the district school library in said district. They may employ a librarian and assistants, and make such additions to the library and such regulations therefor as they shall deem necessary.

§ 12. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same by posting up a written or printed notice thereof in at least five public places in said district, and by publishing the same in two newspapers published in said district, at least two weeks previous to the time fixed for such meeting, which notice shall state the time and place of such meeting, and the purpose for which the same is called; and no business shall be transacted at any such special meeting except that stated in the notice calling the same.

§ 13. All laws and parts of laws inconsistent with this act are hereby repealed, so far as relates to district number one, in the town of West Farms aforesaid.

The town of Morrisania was erected from the town of West Farms, December 7, 1855. The new town included nearly all that part of the old town known as school district number one, for the government of which in school affairs the law relating to West Farms was passed. The law remains in force, except as modified by the provisions of chapter 407, Laws of 1864, page 978 (see West Farms), and chapter 591, Laws of 1866, page 1262, and chapter 356, Laws of 1867, page 788, volume 1.

Chapter 263, Laws of 1861, page 590, authorized the board of education to borrow \$10,000 to build a school-house, and to secure the money by a mortgage on the school property of the district. Whenever the money should become due, the board was authorized to levy and collect the amount due by tax.

[*Chap. 591, Laws of 1866, p. 1262.*]

§ 2. If in the opinion of the board of education, it shall be for the best interests of the district to raise by loan, or by the issue of bonds, the amount required for the purposes required in the preceding section of this act (referring to section seven as above amended), then it shall be lawful for said board to raise on certificates of loan or by the issue of bonds, a sum not exceeding the amount voted at a district meeting, to be levied and assessed upon the taxable property of the district; said bonds and certificates of loan to be executed by said board in their official capacity, signed by the president and secretary. The bonds issued by said board shall bear seven per cent interest, payable semi-annually, and two thousand dollars of the principal of said bonds shall be payable one year from the date of their issue, and two thousand dollars of the principal shall be payable every year thereafter, until the whole amount is paid. And if a loan shall be made by said board for the purpose herein prescribed, two thousand dollars of the amount borrowed by said board shall be payable at the end of one year, and two thousand dollars every year thereafter until the whole amount shall be paid.

§ 3. The said board of education, in addition to the other taxes which they are authorized by law to raise, are hereby authorized and required to assess upon the taxable property of

said district, and cause to be collected, a sum of money sufficient to pay the principal and interest due upon any loan which they have made, or to pay the principal and interest of the bonds, which they may have issued for the purposes provided in the first section of this act.

#### MORRISVILLE.

[*Chap. 820, Laws of 1867, p. 2068, vol. 2.*]

SECTION 1. The trustees of school district number eight, of the town of Eaton, in the county of Madison, known as the Morrisville union school, are hereby authorized to divide said school into two or more departments, and to establish therein an academical department whenever, in their judgment, the same is warranted by the demand for such instruction. Said trustees are also authorized to receive into said school any pupils residing out of said district, and to establish and regulate the tuition fees of said non-resident pupils in the several departments of said school. Said trustees are also authorized to regulate the transfer of scholars from the primary to the academical department in said school, and from class to class, as their degree of scholarship may warrant; and to direct what text books shall be used in the different departments of said school. Said trustees are also authorized to establish such rules and regulations concerning the order and discipline of the school in the several departments thereof, as they may deem necessary and proper to secure the best educational results.

#### MOUNT MORRIS.

[*Chap. 727, Laws of 1866, p. 1547, vol. 2.*]

SECTION 1. School districts numbers one, three and fifteen, of the town of Mount Morris, county of Livingston, and State of New York, and all that part of district number two, in the same town, which lies north of the State road and east of the highway on which the residence of Reuben Weeks, late of Mount Morris aforesaid, deceased, stands, and east of a line in continuation of the center of said highway extended northerly to the Genesee river, are hereby consolidated for the purposes and to the extent in this act specified; and shall hereafter, for the purposes of this act, form but one school district, to be called and known as "the Mount Morris union free school district." And said consolidated district, for the purpose of the apportionment and distribution of school moneys from any source, shall be recognized and regarded as and shall be a school district under the general school laws of this State.

§ 2. The schools organized under this act, except the academical department herein provided for, shall be free to all pupils between the ages of five and twenty-one years residing in said consolidated district. Pupils not residents of said district, of the age above indicated, may be admitted into any free school within said consolidated district only on the written consent of the board of education herein provided for, or a majority of them, and upon such terms and conditions as to tuition, and in other respects as said board may from time to time prescribe. All tuition received from non-resident pupils shall be applied to the payment of teachers' wages in the primary department.

§ 3. Said consolidated district may be divided into four convenient sub-districts by the board of education herein provided for, to be denominated primary sub-districts numbers one, two, three and four; and the school-houses in said sub-districts shall be used for the education of the children residing in said sub-districts respectively entitled to attend common schools, as far as practicable; and when such children shall arrive at sufficient age and proficiency in learning, they may be transferred, upon the proper testimonials, into the more advanced departments created and authorized by this act; the age, qualifications and testimonials to be prescribed by the by-laws, rules and regulations of the board of education hereinafter created.

§ 4. The schools in said consolidated district shall be under the direction, management and control of nine trustees, who shall be taxable inhabitants of said district, to be chosen as hereinafter directed, and shall be denominated "the board of education of the Mount Morris union free school." Said trustees shall be a body corporate in relation to all the powers and duties conferred upon them by this act, and shall have a corporate seal, with such inscription and device thereon as the said board shall designate, until the election of such trustees under this act as hereinafter provided. Clark B. Adams, Lorenzo J. Ames, Walter H. Noble, Loren Coy, Hiram P. Mills, Zara W. Joslyn, Ambrose B. Millard, Charles L. Bingham, and Pomeroy Sheldon, shall be and act as such trustees of such consolidated district, and be such board of education, and shall discharge all duties and perform all acts necessary to be discharged and performed in pursuance hereof, for the purpose of carrying into effect the provisions of this act. The persons above named may organize by the appointment of a president and clerk, and such other officers herein provided for, as may be necessary in the discharge of their duties.

§ 5. There shall be a meeting of the inhabitants of said consolidated district, entitled to vote at school meetings, at the school-house in the present school district number one, in the town of Mount Morris, on the second Tuesday of October, eighteen hundred and sixty-six, at seven o'clock in the evening of that day, at which the trustees herein provided for shall be chosen and elected by a majority vote of such inhabitants present and voting at such meeting, taken by ballot, of whom one shall be a resident of each sub-district hereby

provided for, and the balance shall be taken from the consolidated district at large; and they shall by the order of such meeting be divided into three classes; the first class to hold for one, the second for two, and the third for three years; and thereupon the office of any then existing board of education in said consolidated district shall cease, except as herein-after provided. The trustees so chosen and elected shall constitute a board of education for such consolidated district, under the designation and title hereinbefore mentioned. The term of office of all trustees elected under the provisions of this act, after the first election as aforesaid, except in case of trustees chosen to fill vacancies, shall be three years; and thereafter three of such trustees shall annually be elected.

§ 6. The meeting provided for in the last preceding section shall be called by publishing a notice thereof, stating the time and place of its assembling, in a newspaper published in the village of Mount Morris, for two successive weeks next before such meeting, and posting such notice, either printed or written, on the outside of the outer door of each school-house in said consolidated district, including academy building, if there be one, at least five days before such meeting; which notice so published and posted shall be signed by the trustees herein appointed, or a majority of them, and thereafter and after such meeting there shall be an annual meeting of the inhabitants of said consolidated district, on the second Tuesday of October in each year, notice of which shall be given as herein provided for the meeting hereinbefore appointed, except that the notice shall be signed by the president and clerk of the board of education, instead of the trustees; and in case no newspaper be at such time published in the village of Mount Morris, then such notice shall be given by posting the same as herein provided. Any such annual meeting may adjourn from time to time, and the proceedings of such adjourned meeting shall be in all respects as regular as if transacted at an original meeting.

§ 7. Special meetings of the inhabitants of said district may be called by publishing and posting a notice thereof, stating the time and place and object of such meeting, as herein provided for posting and publishing the notice of an annual meeting, which notice shall be signed by the president and clerk of the board of education; and in addition to the posting herein above prescribed, such notice of such special meeting shall be posted in two public places in each of the sub-districts into which said consolidated district may be divided, at least five days before said meeting.

§ 8. The board of education herein provided for shall hold its first meeting on the first Tuesday after its election, at an hour and place to be designated by a vote of the board; and thereafter they shall hold annual meetings on the first Tuesday after each annual meeting of the district, and quarterly meetings on the first Wednesday after the commencement of each term of school in said district, at an hour and place to be fixed by the board, and such other special meetings as the board may see fit to call, which special meetings may be called by the direction of the president of the board, or, in case of his absence or his inability, neglect or refusal to serve, by a vote of the board. At each quarterly meeting the board shall appoint a visiting committee of not less than three of its members, whose duty it shall be to visit all the schools, in said consolidated district, including the academical department, at least twice in each term.

§ 9. At the first meeting of said board of education, and annually thereafter at each annual meeting, they shall elect one of their number president of the board, whose duty it shall be to preside at all meetings of the board when present, and when absent, a president pro tempore may be appointed. The board shall also appoint a clerk, who shall be an inhabitant of said district, and shall hold his office during the pleasure of the board, and receive a compensation to be fixed by the board. The said clerk shall attend the meetings of the board, and make and keep a record of the proceedings thereof in a book to be provided by the board of education for that purpose, and shall perform such other duties appertaining to his office as the board may require. In case the clerk shall be absent at any meeting of the board, the board may appoint any one of its members, except its president, clerk pro tempore.

§ 10. The said board shall have the power, and it shall be their duty, to appoint a treasurer and collector, each of whom shall be an inhabitant of said district and qualified to vote at school district meetings, and who shall severally hold their appointment for one year, and until others shall have been duly appointed in their places, and shall have qualified by giving the security herein provided for, unless sooner removed by the board for cause. Only one of such appointments shall be held by the same individual at the same time. Such treasurer and collector shall severally, and within ten day after notice in writing of their appointment, and before entering upon the duties of their offices, execute and deliver to said board of education a bond payable to them in their corporate name, in such penalty and with such securities as the board may require and approve, conditioned for the faithful discharge of the duties of their respective offices, and that they will well and truly account for and pay over, on the proper order, in accordance with the resolution of said board of education, all moneys which they may receive as such officers. The evidence of the approval of such board shall be the indorsement thereon of such approval, signed by the president of the board, and in case such bond shall not be given within the time specified, such office shall thereby become vacant, and the board shall thereupon make other appointments to supply such vacancies.

§ 11. The treasurer shall be furnished by the board of education with necessary books in which to enter and keep his official accounts; and he shall keep a true account of all the moneys received and disbursed by him, and of the parties from whom received, and to whom and for what purpose paid out. But no money shall be paid from the treasury, except on a draft signed by the president and countersigned by the clerk, and sealed with the seal of the board of education, in pursuance of a resolution of said board, which draft shall be made payable to the order of the person or persons entitled to receive said moneys, and

shall state on its face the purpose or service for which the same is drawn. The treasurer shall keep in a book furnished and prepared for that purpose, an accurate account of all drafts so drawn on and paid by him, stating the person to whom payable, and for what purpose and sum drawn, and out of what fund payable. The drafts drawn on the treasurer shall be numbered consecutively, and the treasurer in any question of priority of payment shall pay all such drafts in the order of their respective numbers, unless otherwise specially directed by the board of education. The books of the treasurer, and also the record of the proceedings of the board, shall at all times be subject to inspection and examination by the inhabitants of said districts.

The treasurer shall receive a compensation to be fixed by the board. He shall report in writing to the board of education, at least five days before each annual meeting, the aggregate sum of money received by him from all sources during the past year, in his official capacity, and the sums received on account of each particular fund, the amount disbursed by him, and to whom, and on what account, and for what purpose paid, and the amount remaining on hand if any, with a statement of all drafts paid by him during said year, the person to whom, and the fund out of which payable, respectively, which report shall be filed by the clerk with the official papers of the board. And, with each annual report, the treasurer shall return to the board the drafts paid by him during the preceding school year.

§ 12. The clerk shall keep in a book, to be provided him for that purpose, an accurate account of all drafts drawn by the president on the treasurer; the person to whom payable, and the fund out of which the same is to be paid, and the purpose for which it is to be drawn.

§ 13. The said board of education shall have power, and it shall be their duty:

1. To establish and organize in said Mount Morris union free school district, and in the primary sub-districts thereof, primary departments or schools, and departments of higher grades; they shall also establish and organize an academical department when and as soon as they shall deem such academical department necessary and advisable, and shall have power to alter and discontinue the same as they may deem advisable;

2. To hire or purchase school-houses or school rooms, and lots or sites for school-houses, or sites with buildings thereon, to be used as school-houses, and to fence and improve such lots and sites, and to sell the same with their appurtenances, as and when they may deem proper, providing such purchase and sale be authorized by a vote of the district;

3. To build, enlarge, alter, improve, furnish and repair school-houses, with their out-houses and appurtenances, as they may deem advisable, providing such building and enlargement of school-houses are authorized by a vote of the district;

4. To have the custody and control of the said school-houses, out-houses, furniture and appurtenances, apparatus and district books and to see that the ordinances in relation to the care and safe keeping of the same be observed;

5. To contract with and employ all teachers in the public schools and the academical department (the number of teachers not to be less than one for every fifty pupils attending such primary schools), and for sufficient cause to remove any such teacher;

6. To pay teachers' wages after the application of the public money by law appropriated and provided for that purpose, and any tuition applicable thereto herein provided, from the money authorized by act to be raised for that purpose;

7. To pay all necessary contingent expenses of said schools, including a common corporate seal and district books, out of contingent fund herein provided for;

8. To fill any vacancy which may occur in said board by reason of the death, removal or refusal to serve of any member or officer thereof, and any vacancy arising from any cause except the expiration of the term of office; and the person appointed to fill such vacancy, if a trustee, shall hold his office until the next election of trustees in said district; and if any other officer, until the time for the regular appointment by the board, unless sooner removed by the board;

9. To remove any member of the board for official misconduct; but a written copy of all charges of misconduct made against any such member shall be served upon him at least ten days before the time appointed for a hearing of the same, and he shall be allowed a full and fair opportunity to refute such charges before removal;

10. To take and hold for the use of such schools, or of any department of the same, any real estate transferred to them or it by gift, grant, bequest or devise, or any gift, legacy or annuity of whatever kind given or bequeathed to the said board, and apply the same, or the interest or proceeds thereof, according to the instructions of the donor or testator;

11. To have in all respects the superintendence and management of the public schools and academical department of the said consolidated district organized in pursuance thereof, and, from time to time, to adopt, alter, modify and repeal such by-laws, rules and regulations as they may deem proper and necessary for their regulation; and for the organization, government and instruction of said schools and academical department; and for the reception of pupils therein, and their transfer from one department to another; and generally for good order and government; and to receive into said public schools and the academical department thereof, pupils not residing in said district and to prescribe and regulate the tuition of such non-resident pupils, and collect the same; to expel any scholar either from the public schools or the academical department for misconduct or cause injurious to the interests of the school; to direct what text books shall be used in said schools and academical department, and provide for uniformity in the same; to provide fuel and other necessities for said schools; to appoint librarians and assistant librarians as they may from time to time deem proper, and regulate their duties and fix their compensation, and generally to make and adopt such by-laws, rules and regulations as will enable them to carry into effect and exercise the powers herein conferred on them.



§ 14. Whenever an academical department shall be organized under the provisions of this act, in said Mount Morris union free school district, the said board of education shall have the power, and it shall be their duty, to fix and determine rates of tuition for pupils attending the same in the different branches of learning they may pursue, which shall in no instance exceed four dollars per term for pupils residing in said district; but for non-resident pupils the rates of tuition may be as high for the different branches as the said board of education may determine; and said rates for non-resident pupils may from time to time be changed by said board as they may deem expedient and proper; and said board may in their discretion exempt any indigent pupil or pupils, either resident or non-resident, from the payment of any tuition in said academical department; and indigent non-residents from the payment of tuition in the free or primary schools.

§ 15. The academical department, which may be established as aforesaid, shall be entitled to its distributive share of the literature fund in like manner and on like condition with the academies of this State; and shall be subject to the visitation of the Regents of the University, in like manner with other academies of this State.

§ 16. The necessary expenses of such academical department, to wit: teachers' wages, the expense of fuel, and other incidental and contingent expenses, necessary to the successful operation of the same, shall be paid by the board of education, by an application thereto of the literature fund drawn from the State, and the tuitions received from pupils therein; and if these funds are insufficient to pay such expenses in full, the balance shall be levied upon the taxable property and inhabitants of said districts entitled to vote at district meetings, or by resolution of the board of education if such inhabitants refuse to vote the same, and as hereinafter provided.

§ 17. It shall be the duty of said board of education to present to the inhabitants of said district, at each annual school meeting, a detailed statement of the amount of money received into the treasury from all sources during the past year, and the particular amounts from each particular source; how much thereof, to whom and for what purpose, has been paid out and disbursed, and the amount remaining in the treasury, if any. Also a detailed statement of items of anticipated expenses for the coming year for the support of the primary free schools, to pay which taxes may be levied, including teachers' wages, after applying thereto the public money and any other money applicable to that purpose, and also including any sum necessary to procure suitable room or rooms for school libraries, and the payment of librarians, clerk and treasurer, and the necessary expense of repairs of school-houses, out-houses, fences and appurtenances, and the particular object for which such moneys are needed, the indebtedness of said district, if any, for the necessary support of said primary free schools; and any deficiency in the means applicable to the support of the academical department, including necessary repairs on the academy buildings and out-houses, the number of teachers in said schools, including the academical department during the past year, and the salary paid to each; the number of pupils attending such schools in the different departments thereof, including the academical departments; the text books used in said schools, the number of volumes and condition of the books in the libraries of said district, and such other facts and information relative to the affairs and condition of said schools and consolidated district as in their judgment may be of interest to the inhabitants thereof. In addition to the items of anticipated expenses which can be definitely estimated, and which said board are hereby required to present at such meeting, the board may also present an item not exceeding two hundred and fifty dollars for incidental and contingent expenses, which cannot be estimated in items, and which, when voted by the inhabitants of said district as herein provided, shall be collected and denominated the "contingent fund." They may also recommend the raising of a sum not exceeding one hundred dollars in any one year for the purchase of books for the school libraries, or apparatus and maps for the use of said schools, or the academical department thereof.

§ 18. The said board of education may also, at any annual meeting of the inhabitants of said district, or at a special meeting duly called for that purpose, present to such meeting an estimate of the necessary expenses of purchasing or hiring sites with buildings thereon, to be used as school-houses for the primary or academical department in said consolidated district, or the sub-districts thereof, and improving such buildings and fencing such sites.

§ 19. The inhabitants of such consolidated district entitled to vote at district meetings, when lawfully assembled at any annual meeting or any special meeting called for that purpose, shall have power to, and they may, by a majority vote of those present and voting, vote to raise by tax upon the taxable inhabitants and property of said consolidated district, any sum or sums recommended by the board of education, as provided in the two preceding sections, for any or all of the objects or purposes recommended in said sections, or any part of the sums so estimated and recommended, or a sum or sums larger than estimated and recommended by said board, for any or all the objects and purposes enumerated in said sections, and to direct the said board of education to cause the said sum or sums so voted by them to be levied and raised by tax upon the taxable inhabitants and property of said consolidated district, either in one or several installments, as they, the said board, may determine. And the inhabitants of said district shall have no power to rescind the vote to raise such sum of money, or to reduce the amount so voted, unless the same be done within ten days after the said sum shall have been first voted; and said inhabitants may also when so assembled, by a majority vote of those present and voting, authorize and direct said board of education to purchase or lease sites on which to erect school-houses or buildings to be used as school-houses, including academical buildings, and to fence and improve the sites, erect buildings for school purposes on such sites, and improve, alter, repair and furnish any buildings used by said consolidated school district for school purposes.

§ 20. If the said inhabitants, at any such meeting, shall neglect or refuse to vote to raise the sum or sums estimated necessary by said board for teachers' wages, after applying thereto

the public moneys and any other moneys received by them for that purpose, including tuition applicable thereto, or if they shall neglect or refuse to vote to raise the sum or sums estimated necessary for ordinary and contingent expenses, including necessary repairs on buildings and fences, the "contingent fund" estimated by the board, and the deficiency reported in the academical department, the board of education may by resolution levy and collect the same by tax upon the taxable inhabitants and property of said district, in like manner as if the same had been voted by the said inhabitants, and direct the same to be collected either in one or several installments, as they may deem best.

§ 21. If any question shall arise as to what are ordinary contingent expenses, which the inhabitants of said district are unable to settle, the same may be referred to the Superintendent of Public Instruction, by a statement in writing, signed by one or more of each of the opposing parties upon the question, and the decision of the Superintendent shall be conclusive.

§ 22. Whenever the said inhabitants shall vote to raise any such sum or sums upon the taxable property of said district, or the said board of education shall so levy any such sum or sums upon such taxable property, on the neglect or refusal of said inhabitants to vote to raise the same, for the purpose of collecting any and all such sums so voted and levied to be raised by tax upon such property, the said board of education shall, within thirty days after such sums are so voted and levied, apportion the same upon the taxable property and persons in such consolidated district, and within the same time make, or cause to be made, a tax list, in the manner now provided by law in case of school district taxes, and shall attach thereto their warrant for the collection of the same, either in one or several installments, as the case may be, and shall immediately upon the expiration of the said time deliver such tax list and warrant to the collector of said district, which warrant may be renewed from time to time by said board of education.

§ 23. For the purpose of appropriating such tax the valuation of the taxable property of such district shall be ascertained, as far as possible and practicable, from the last assessment roll of the town of Mount Morris, after revision by the assessors; and no person shall be entitled to any reduction in the valuation of such property as so ascertained, unless he shall give notice of his claim to such reduction to the president of said board of education before such tax list shall be made out.

§ 24. When such reduction shall be duly claimed, or when the true valuation of such taxable property cannot be ascertained from the last assessment roll of said town, or such valuation in such assessment roll is believed by such board to be erroneous, the said board of education shall ascertain the true value of the property to be taxed by the best evidence in their power, and may add to the same when in their judgment such additions will be just, giving notice to the persons interested, and proceeding in the same manner as town assessors are required by law to proceed, in the valuation of taxable property, or proceeding to correct the assessment roll of a town.

§ 25. All moneys received by virtue of this act, or received by said consolidated district or the board of education thereof, for the use of the public schools or academical department therein, whether from the common schools, United States or literature funds, or State tax, or otherwise, shall be deposited with the treasurer herein provided for; and the treasurer shall keep said money so received by him, or which may come to his hands, separate and distinct from any other money; and shall pay no money from the treasury except on drafts duly drawn, and any violation by him of this section shall be deemed a misdemeanor and be punishable accordingly. The money annually apportioned to said district by the Superintendent of Public Instruction and school commissioners shall be paid to the treasurer of said board of education, by the supervisor of the town of Mount Morris, on the order of the president of the said board, countersigned by the clerk of said board.

§ 26. The said trustees shall be trustees of the school libraries in said school district, and all the provisions of law relative to school district libraries shall apply to said trustees in like manner as to the trustees of any school district. They shall also be invested with the same discretion as to the disposition of the moneys appropriated by law for the purchase of libraries as is conferred by law on the inhabitants of school districts. It shall be their duty to provide rooms for libraries and the necessary furniture therefor. The librarian shall report annually to said board at least fifteen days before each annual district meeting the condition of the libraries under his charge, and the number of volumes therein, and the said board shall make all purchases of books for said libraries, and direct the mode of their distribution.

§ 27. The title to the school-houses and lots, furniture, district books, apparatus and appurtenances, and all other school property in said districts and parts of districts hereby consolidated, shall be vested in the said board of education and their successors in office, in their corporate capacity, in trust for the use of said public schools and the academical department of said consolidated district; and the same, while used for school purposes, shall not be subject to taxation, and shall not be levied upon or sold by virtue of any warrant or execution, except for teachers' wages; and the purchase price of articles bought by direction of said board of education, and except that the lien and all proceedings for enforcing the same of mechanics and others for labor and materials furnished in erecting, altering or repairing such buildings and their appurtenances, shall in no way be affected or impaired by this act.

§ 28. It shall be the duty of the board of education to have reference, in all their expenditures and contracts, to the amount of money which shall be appropriated or subject to their orders or drafts during the current year, and not to exceed that amount. And said board shall apply all moneys raised for or appropriated to the use of the primary or common schools in said consolidated district to the departments below the academical department, and all moneys from the literature funds or otherwise appropriated to the support of the academical department, to the latter department.

§ 29. Nothing in this act contained shall be construed so as to interfere with or prevent the collection of any tax or rate bill, in any district or part of a district hereby consolidated, not now collected under the law in force at the time such rate bill or tax was placed in the hands of the collector for collection; and all contracts now existing not fully performed, made by former trustees of any such district, shall be carried out and performed by such trustees, and for that purpose and for the purpose of meeting any liability incurred by them as trustees, they shall still be regarded as and shall be such trustees, and until such contract and liabilities are disposed of, their office shall not expire as provided in section five of this act.

§ 30. The said board of education may sue and be sued on any contract made in its corporate capacity, or any transaction connected with said schools, out of which accrues a cause of action for or against them, and such action may be brought in a justice's court or court of record, according as such courts respectively have jurisdiction of the subject-matter in ordinary cases.

§ 31. Nothing in this act shall be construed to affect or impair the powers or duties of the Superintendent of Public Instruction in relation to the school districts hereby consolidated, but the same shall apply and be in force as to the district and sub-districts hereby created.

## NEWBURGH.

[Chap. 88, Laws of 1865, p. 125.]

SECTION 1. Every district or common school located in the village of Newburgh, including the Newburgh high school, and every school which may hereafter be located in said village under this act, shall be free to all children between the ages of five and twenty-one years, residing in that village.

§ 2. All that part of the town of Newburgh included within the bounds of the corporation of the village of Newburgh, shall hereafter constitute one common school district. John J. Mouell, John Forsyth, Chas. Eastabrook, Geo. M. Clapp, Hugh McCutcheon, John Corwin, Egbert Alsdorf and Thos. Kimball, are hereby appointed trustees of common schools in said village. The trustees herein appointed, and their successors in office, shall constitute a board, to be styled the board of education of the village of Newburgh, which shall be a corporate body in relation to all the powers conferred and duties enjoined on them by this act. The term of office of the several members of said board named in this act shall be determined by lot, at the first meeting after their appointment, in this manner: The term of office of two of said trustees shall expire on the second Wednesday after the charter election in said village, in the year of our Lord eighteen hundred and sixty-six; the term of two others shall expire on the second Wednesday after the charter election in said village in the year eighteen hundred and sixty-seven; the term of two others shall expire on the second Wednesday after the charter election in said village, in the year eighteen hundred and sixty-eight; and the term of the two remaining trustees shall expire on the second Wednesday after the charter election in said village, in the year eighteen hundred and sixty-nine. The trustees named in this act shall take and subscribe the constitutional oath and file the same with the clerk of said village before entering on the duties of their office.

§ 3. There shall be elected, at the annual charter election of said village, in each year after the passage of this act (excepting the year eighteen hundred and sixty-five), two trustees of common schools to supply the places of those whose terms of office are about to expire, in the following manner, viz.: Each elector shall place on his ballot for trustees of common schools only one name for trustee of common schools, which shall be indorsed, "For trustees of common schools," and of the persons so voted for the two having the highest number of votes shall be declared elected trustees of common schools. The term of office of all trustees of common schools, elected pursuant to this act, shall commence on the second Wednesday after such election, and shall continue for four years.

§ 4. The title of the school-houses, sites, lots, furniture, books, apparatus and appurtenances, and all other school property in said village in this act mentioned, shall be vested in the board of education, and the same shall not be subject to taxation or assessment for any purpose; and the said board of education, in its corporate capacity, may take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest or devise for the use of the common schools or of the free library in said village, except that no real estate held by said board for school purposes shall be sold or disposed of without the consent of the trustees of the village first obtained, as hereinafter provided.

§ 5. It shall be the duty of the clerk of said village, immediately after the election of any person as trustee of common schools, personally or in writing to notify him of his election; and if any such person shall not, within ten days after receiving such notice of his election, take and subscribe the constitutional oath and file the same with the clerk of said village, the trustees of said village may consider it a refusal to serve, and the person so refusing shall forfeit and pay to the village treasurer, for the benefit of the tuition fund, a penalty of ten dollars.

§ 6. The board of education shall have power, at any regular meeting, to fill any vacancies that may occur in the number of trustees from any other cause than the expiration of their term of service. The person or persons so chosen must, within ten days after being notified by the clerk of said board of their election, take and subscribe the constitutional oath and file the same with the clerk of said village.

§ 7. Removal from the village, or failure to attend three successive regular meetings of the board, may be deemed a resignation of the office of trustee of common schools under this act, and the vacancy may be filled as hereinbefore provided. Any trustee of common schools in said village, elected under this act, may be removed from office by the trustees of said village for official misconduct; but a written copy of the charges against such trustee shall be served upon him, and he shall be allowed to refute such charges of misconduct before removal.

§ 8. The annual meeting of the board of education shall be held on the second Wednesday next after the charter election, in each year, when they shall elect a president and vice-president, who shall be of their number, and a clerk, who may be of their number. The president shall perform such duties as are specified in this act, or as may be enjoined upon him by the by-laws of the board; and in his absence the vice president shall perform his duties. The clerk shall keep a record of the proceedings of the board, a book of account with the treasurer of the village and with the teachers or other persons employed by the board, and shall perform such other duties as may be specified by this act, or by the by-laws and instructions of the board.

§ 9. A majority of the board shall form a quorum, and be competent to transact any business of said board. The members of the board shall not receive compensation for their services as trustees. The board shall have power to fix, from time to time, the compensation of the clerk, and of his necessary assistants. The records of the proceedings of the board, or a transcript thereof, certified by the president (or in his absence by the vice-president), shall be received in all courts as prima facie evidence of facts therein set forth, and such records, and all the books, vouchers, accounts, and papers of said board, shall at all times be subject to the inspection of the trustees of said village and of any committee thereof.

§ 10. The board of education shall have a regular meeting at least once in each quarter. At the annual meeting the president shall appoint such standing committees as may be provided in the by-laws of the board.

§ 11. The board of education shall have power, and it shall be its duty:

1. To establish and organize in said village such and so many public schools and departments of higher grades (including an academical department), and schools for colored children, as said board shall deem requisite and expedient, and to alter and discontinue the same at its discretion;

2. To hire, purchase, and prepare houses or rooms for the purpose of free public schools;

3. To alter, improve and repair school-houses and appurtenances, as they may deem advisable;

4. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages, and to defray the expenses of the free library;

5. To have the custody and safe keeping of the school houses, out-houses, books, furniture and appendages, and to see that the ordinances of the trustees of the village and the rules of the board of education in relation thereto are observed;

6. To contract with and employ all necessary teachers, and at their pleasure to remove them;

7. To provide evening schools for those whose ages or avocations are such as to prevent their attending the day schools established by this act;

8. To pay the wages of such teachers out of the moneys from all sources appropriated and provided by law for this purpose;

9. To defray the necessary contingent expenses of the board, including the wages of janitors;

10. To expend all moneys raised by this act for building school-houses, purchasing sites, and other purposes for which the same may be raised, in such manner as they may deem proper;

11. To have the superintendence and management of the common schools in said village, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government, and instruction; for the reception of pupils, and their transfer from one school to another, for their advancement from class to class, as their degree of scholarship may warrant, and generally for the promotion of their good order, prosperity, and public utility; and if at any time an academical department shall be established by said board, it shall be entitled to its distributive share of the literature fund, in like manner and on like conditions with the academies of this State, and shall be subject to the visitation of the Regents of the University, in like manner with the other academies of this State.

§ 12. The trustees of said village shall have the power, and it shall be their duty, to raise from time to time by tax, to be levied equally upon all the real and personal property in said village, which shall be liable for all the ordinary village taxes, such sum or sums of money as the board of education shall deem necessary for any or all of the following purposes:

1. To purchase, lease or improve sites for school-houses;

2. To build, purchase, lease, enlarge, alter, improve and repair school-houses, and their out-houses and appurtenances;

3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages;

4. To procure fuel and pay the contingent expenses of free schools, the expense of the free library, and the annual salary to the clerk and his assistants;

5. To pay the wages of teachers, due after the application of the public school moneys, and all other moneys received by said board or under their control, which may by law be appropriated and provided for that purpose. And the trustees of said village, or the board

of education, are authorized and directed, when necessary, to raise by loan in anticipation of the taxes, the moneys to be raised, collected, and levied as aforesaid; the taxes to be levied as aforesaid, and collected by virtue of this act, shall be collected at the same time and in the same manner as other village taxes.

§ 13. The board of education shall determine and certify to the trustees of said village, on or before the first day of October in each year, the sums in their opinion necessary or proper to be raised under the twelfth section of this act, specifying the sums required for the year commencing on the first day of October, for each of the purposes therein mentioned; and it shall be the duty of the board, in all its expenditures and contracts, to have reference to the amount of moneys which shall be subject to their order during the current year, and not to exceed that amount, except in cases of special emergency in relation to any of the aforementioned items in section twelve, when it shall be the duty of the board, in a supplementary estimate, to determine and certify to the trustees of said village the sums thus needed, and said sums shall be levied and collected in the same manner as other village taxes.

§ 14. It shall be the duty of the trustees of the village, within fifteen days after receiving the certificate of the board of education, required by the thirteenth section of this act, of the sums necessary or proper to be raised under the twelfth section of this act, to certify to said board of education that the amount will be raised by them for the year commencing on said first day of October, for the purposes mentioned in said twelfth section.

§ 15. It shall be the duty of the board of education on or before the first day of October in each year, to prepare and report to the trustees of the village a true and correct statement of the receipts and disbursements of moneys under and in pursuance of the provisions of this act during the preceding year, in which account shall be stated under appropriate heads:

1. The moneys raised by the trustees of the village under the twelfth section of this act;
2. The school moneys received by the treasurer of the village, under the distribution of the public moneys of the State;
3. The moneys received by the board under the fourth section of this act;
4. All other moneys received by the treasurer, subject to the order of the board, specifying the sources;
5. The manner in which said sums of money shall have been expended, specifying the amount paid under each head of expenditure. And the said board shall cause the same to be published (within two weeks after making such report) in two of the newspapers published in said village.

§ 16. The board of education shall have power, and it shall be their duty, to keep and maintain in a suitable building one free library to be known as the "Newburgh free library," for the use of the pupils in the schools under their charge, and of the residents of said village. They shall receive all moneys which are now or may hereafter be appropriated to the district by virtue of any law relating to school district libraries, and shall expend the same in the manner provided by such law, and all the provisions of law which now are, or hereafter may be, passed relative to district school libraries, shall apply to said board. They shall have power to expend in the purchase of books such moneys as may be received for the tuition of non-resident pupils, together with the moneys received for penalties incurred for the loss, injury or destruction of books, or of their detention or other cause, or any other moneys that may lawfully come to their hands applicable to said purpose. They shall have power to direct the sale or exchange of any books of which there are duplicate copies in the library, or that may be regarded as of improper character, and apply the proceeds to the purchase of other books; and shall keep the books of the library in good repair, and shall make such arrangements as may be necessary for their preservation or circulation. They shall have power to accept the donation of books or other property to such library, and to receive or hold, for the use of the public, the books of any library that may now or hereafter be granted for that purpose, and to make provision for their preservation and repair. The clerk of the board shall be the general librarian, and shall have charge of the library, with power to appoint assistant librarians, subject to the approval of the board, and the board shall fix the compensation which the clerk shall receive as librarian; and the compensation which said assistant librarians shall receive shall be a charge upon the compensation paid to the clerk, and may be fixed by him.

§ 17. Whenever, in the opinion of the board, it may be advisable to sell any of the school-houses, lots or sites, they shall report the same to the trustees of the village, and with the consent of the trustees shall sell and dispose of such school-houses, lots or sites to the best possible advantage.

§ 18. All moneys to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to and provided for said village, shall be paid to the treasurer of the village of Newburgh, who, together with the sureties upon his official bond, shall be accountable therefor, in the same manner as for any other moneys in said village. Such moneys shall be deposited with such treasurer to the credit of said board of education, and shall be drawn only in pursuance of a resolution of said board, by a draft drawn by the president (or vice-president, in his absence), and countersigned by the clerk, payable to the order of the person or persons entitled to receive such moneys; and said treasurer shall keep the funds received by him under this act separate and distinct from any other funds; but nothing in this act contained shall be regarded as prohibiting the temporary loan, by the board of education, to the trustees of the village, of any surplus moneys which may stand to the credit of the board of education on the books of the treasurer, the trustees of the village replacing the same whenever it may be required by the said board.

§ 19. The trustees of the said village shall have the power, and it shall be their duty, to pass such ordinances and regulations as the said board of education may report as necessary and proper for the protection, safe keeping, care and preservation of the school-houses, lots,

sites, appurtenances and appendages, library, and all property belonging to or connected with the schools in said village; and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in the act to incorporate the said village; and all such penalties shall be collected in the same manner that the penalties for the violation of the village ordinances are by law collected, and when collected shall be paid to the treasurer of the village, and be subject to the order of the board of education in the same manner as other moneys raised pursuant to the provisions of this act.

§ 20. The said board of education shall have power to allow the children of persons not residents within the village to attend any of the free schools of said village, under the care and control of said board, upon such terms as said board shall by resolution prescribe.

§ 21. The said board of education shall make an annual report to the school commissioner of the school commissioner's district in which said village is situated, containing the facts required to be reported by the trustees of school districts; and said districts shall participate in the apportionment of the public school moneys in the same manner and upon the same conditions as common school districts.

#### NEW ROCHELLE.

[*Chap. 135, Laws of 1857, p. 261, vol. 1.*]

SECTION 1. School district number one in the town of New Rochelle shall form a permanent school district, and shall not be subject to alteration by the district commissioner of common schools for the district in which it is located.

§ 2. The said district shall be under the direction of a board of trustees, to be styled "the board of education of school district number one, in the town of New Rochelle," which shall be a body corporate in relation to all the powers and duties conferred upon them by this act; said board to consist of nine members or trustees, five of whom shall constitute a quorum for the transaction of business.

§ 3. That the annual meetings of the voters of the said district shall be held at such place as the board of education may appoint, on the first Monday of April, in each year, and the first meeting under this act shall be held on the first Monday in April next, at the town-house in the said town, at which meeting the chairman or moderator thereof shall nominate three persons to act as inspectors of election at that meeting, and there shall then be elected by ballot nine trustees, who shall constitute the first board of education under this act, and who shall hold their offices as follows, viz.: Three for one year, three for two years and three for three years, so that there shall be elected three trustees at each annual meeting thereafter; and immediately after the first election, as aforesaid, the chairman and secretary of the said meeting shall divide by lot the trustees so elected into three classes: those in the first class to hold their office for one year; those in the second class for two years and those in the third class for three years from the time of their election as aforesaid; and thereupon the office of any existing trustees of said district shall cease, and notice of such meeting for the said first Monday in April next shall be given by the trustees of the said district, then in office, at least thirty days previous to such meeting, by posting a written or printed notice thereof in five public places in the said district.

§ 4. At the annual meeting of said district in each year, from and after the said meeting of first Monday in April next there shall be elected three members of the district and entitled to vote therein, and shall hold their said office for three years; there shall also be elected at said first meeting, and at each annual meeting thereafter, a district treasurer and a district collector, who shall respectively hold office for one year: which said election and all other elections under this act, shall be by ballot: and the qualifications of voters shall be the same as for voters at the election of school officers; and notice of such annual meeting shall be given by posting up a written or printed notice thereof, signed by the president and secretary of said board of education, in at least five public places in the said district, at least thirty days previous to such annual meeting, which said notice shall state the time and place of meeting; and any officer elected under this act may be re-elected; said board of education shall appoint three inspectors of election, at least thirty days previous to any election under this act, after the first; and such inspectors shall receive the ballots and declare the result of the election.

§ 5. The said board of education may call special meetings of said district whenever they may deem it necessary, or whenever petitioned for in writing by twenty-five of the legal voters of said district; and notice of such special meeting shall be given in the same manner as hereinbefore mentioned for notice of annual meetings, which notice for special meeting shall state the time and place for holding the same and the purpose for which the same is called; and no business shall be transacted at such special meeting except that stated in the notice calling the same.

§ 6. The said board of education shall, at their first meeting (which shall be held within ten days after their election as aforesaid), choose one of their number for president and one for secretary of said board; which said officers shall hold their said offices for one year, and such officers shall be chosen annually thereafter. In the absence of the president or secretary at any stated or special meeting of the board, a president or secretary may be appointed for the time being.

§ 7. The district treasurer and collector, within ten days after receiving notice in writing of their election, signed by the inspectors, whose duty it shall be to give such notice, shall execute and deliver to the said board of education a bond, in such penalty and with such sureties as the said board may deem sufficient, conditioned for the faithful discharge of their respective duties; and in case such bond shall not be given within ten days after receiving

such notice, such office shall thereby become vacated; and the said board may make appointment to fill such vacancy; and all moneys to be collected or received by virtue of this act, and all moneys by law appropriated to or provided for said district, shall be paid to the treasurer thereof, who, together with the sureties on his official bond, shall be accountable therefor to the said board of education, who may, whenever deemed necessary, sue for the same in their corporate name; and said treasurer shall not pay out any such moneys except by a resolution of the said board and upon an order signed by the president and certified by the secretary, to be drawn in pursuance of such resolution.

§ 8. Every resignation of officers appointed or elected under this act shall be made to the board of education, and such resignation shall have no force or effect, nor in any degree excuse such officer from the discharge of his duties until the same be accepted and approved by a resolution of the said board; and any such officer may be removed from his office for any official misconduct, by a resolution of the board, two-thirds of the whole number constituting said board concurring; but a written copy of the charges against such officer shall be served upon him, and opportunity shall be given to him to be heard in his defense, before any such resolution for his removal shall be adopted. Vacancies in the board, occurring by resignation or any other cause, may be filled by the said board until the next annual election, when such vacancies shall be filled in the same manner as those by expiration of term of office; and if from any cause the election of any officer does not take place on the day appointed, such office shall not thereby become vacant, but the old officers shall continue to discharge their respective functions until others are elected or appointed in their place. All officers mentioned in this act shall be residents of the district and entitled to vote therein, and shall be deemed public officers within the intent and meaning of section thirty-eight of title six of chapter one, part four of the Revised Statutes, and as such liable to the penalties therein prescribed.

§ 9. Every officer in this act mentioned, having in his possession, custody, care, charge or control, any property belonging to said district, or any money raised by the provisions of this act, or provided by law for the purposes of education in said district, shall, at the expiration of his term of office, or whenever such officer shall resign, be removed from his office, cease to act, or his office be otherwise vacated, transfer all such property and pay over all such money to the board of education.

§ 10. The said board of education may make all necessary by-laws for their own government. The said board shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter term; special meetings may be called by the president, or in his absence or incapability to act, by the secretary, or any other member of the board, as often as may be necessary, by giving personal notice thereof, in writing, to each member, at least twenty-four hours before the hour of meeting, and if any member of the board shall refuse or neglect to attend any three successive stated meetings of the board, and if no satisfactory cause for his non-attendance be shown, the board may declare his office vacant, and such vacancy may be filled in the manner mentioned in the eighth section of this act. No member of the said board shall receive any pay or compensation for his services, and it shall not be lawful for any member of the said board to become a contractor for building or making any improvement or repairs authorized by this act, or to be in any manner directly or indirectly interested, either as principal, partner or surety, in any such contract, and all contracts made in violation of this provision shall be absolutely void, and the person so violating shall forfeit the sum of fifty dollars, and all forfeitures or penalties under this act, and all money payable to, or belonging to the said district, may be prosecuted for, by, and in the name of the board of education, and on recovery shall be paid over to the treasurer of the district, for the use of the common schools therein.

§ 11. The title to the school-houses, sites, lots, furniture, books, apparatus and appurtenances in this act mentioned, and all other school property in the said district, shall be vested in the said board of education, and the same while used for or appropriated to school purposes shall be exempt from all taxes or assessments, and shall not be liable to be levied upon and sold by any warrant or execution. And the said board of education, in its corporate capacity, may take, hold, and dispose of any real or personal estate transferred to it by gift, grant, bequest, or devise, for the use of the common schools in said district, or any or either of them, and may mortgage or incumber the same for school purposes, whenever authorized so to do by a majority attending any annual or special meeting duly called. They shall have and possess within the said district all the rights, powers and authority of district or county commissioners of common schools. They shall have the entire control and management of all the common schools in said district, and of all the property belonging to the same, and they shall require one of their number to visit the said schools at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that all the regulations appertaining to the same are rigidly adhered to.

§ 12. The board of education shall have the control and charge of the district school library in said district; they may employ a librarian, make such additions to the library, and such regulations concerning the same, as they shall deem necessary and proper; provided such regulations shall not conflict with the general rules and regulations established by the Superintendent of Public Instruction.

§ 13. The said board of education shall have power, and are hereby directed, to levy and collect by tax, in each year, upon all the taxable property and inhabitants in said district (as the same shall be assessed by the assessors of the town in which said district is situate), such sum as shall be authorized by a majority of the voters at any special or annual meeting of the district, for the purposes specified in sections fourteen and sixteen, and the said board shall add to their warrant for collection of taxes, such amount as they may deem proper for fees for collection, not exceeding five per cent on the amount to be collected. Said board

shall have the power to make all warrants for the collection of the taxes authorized as aforesaid, returnable at sixty or ninety days, in their discretion, and to renew the same whenever it shall become necessary. And in case it shall appear that the assessment roll does not include all the taxable property of such district, the property omitted shall be assessed by the said board in the mode required by law, and added thereto.

§ 14. Whenever, in the opinion of the said board, it becomes necessary or expedient to build an additional or new school-house or houses in the district, or to enlarge those already built, they shall submit the plans and estimated cost of such building, and of furnishing the same, to the electors of the said district, at the annual meeting or at a special meeting called for that purpose; and if a majority of such electors present shall vote in favor of the same the said board may proceed to carry the said improvements into full effect.

§ 15. Whenever, in the opinion of the said board of education, it may be advisable to sell or exchange any of the school-houses, lots or sites, they shall report the same to the electors of the said district, at an annual meeting or at a special meeting called for that purpose, and if a majority of the electors present at such meeting shall be in favor of the same, the said board may sell or dispose of such school-houses, lots or sites, either at public auction or private sale, as they may deem most advantageous, and give good and valid conveyances for the same, in the usual form of conveyance by corporations, and, on receipt of the purchase-money, shall pay over the same to the treasurer of the district.

§ 16. The said board of education shall have power, and it shall be their duty, out of the funds collected and paid as provided or mentioned in sections thirteen and twenty-one, and from any funds belonging to the said district, in the hands of the treasurer:

1. To purchase or lease and improve sites for school-houses when authorized as aforesaid;
2. To build, purchase, lease, enlarge, alter, improve and repair school-houses and the proper out-houses and appurtenances, so as to afford ample and proper accommodations to educate all the children in said district;
3. To purchase, exchange, improve and repair school apparatus, books, maps, furniture and appendages;
4. To procure fuel and defray the contingent expenses of the said schools and of the board of education;
5. To hire teachers, and to pay the wages of such as shall be employed by them;
6. To defray the expenses of insuring all the school property belonging to the said district;
7. To cause to be made and to adopt a common seal for the said corporation, with such device or inscription as they may think proper.

§ 17. The public schools in the district shall be free to all the children residing in the district; and the said board of education may permit persons not resident within the said district to attend such schools on such terms as they shall prescribe; and the said board may, in their corporate name, and for the benefit of the said district, sue for and recover of the father or mother, master or mistress, or any person under whose charge such non-resident child or children may be, all such sums as shall be so prescribed, with costs of suit.

§ 18. The supervisor of the town of New Rochelle, or such other officer as may be authorized to receive the school moneys from the county treasurer for said town, shall pay over to the treasurer of the said district all the public moneys in his hands apportioned to the said number one.

§ 19. The said board of education shall prepare and submit, at each annual meeting of the district, an estimate of the amount necessary to be raised for defraying the expenses of the district for the ensuing year, specifying the purposes for which the same is to be expended.

§ 20. A school for colored children may be organized by the said board of education, and be supported in the same manner as other schools shall be supported under and by virtue of this act.

§ 21. The said board of education shall, at the annual district meeting, submit a full report, in writing, of their doings as such board, and shall state therein the number and condition of the schools in said district, under their charge, the number of teachers employed, the number of scholars attending the said schools, the studies pursued, and amount of moneys received from the State and from other sources, as well as the amount raised in the district for school purposes, the expenditures of the same, and all other particulars in detail concerning said schools, with such suggestions as they may think proper to make in relation thereto; which report may, if the board think proper, be printed in pamphlet form and circulated among the voters of the said district, or published in some newspaper printed in the county.

§ 22. All laws and parts of laws inconsistent with this act are hereby repealed, so far as they relate to district number one, in the town of New Rochelle; but said district, and the officers thereof, shall continue to be subject to the decisions, rules and regulations made and established by the Superintendent of Public Instruction.

## NEWTOWN.

[Chap. 807, Laws of 1867, p. 2012, vol. 2.]

SECTION 1. School district number three, in the town of Newtown, in the county of Queens, shall form a permanent school district, and shall not be subject to alteration by the school commissioner of the school commissioner district in which said district is situated.

§ 2. The said district shall be under the control and direction of a board to be styled "the board of education of district number three, Newtown," which board shall consist of five



members, three of whom shall constitute a quorum for the transaction of business; and it is hereby provided that the members of the present board who have been elected prior to the passage of this act, may remain in office during their unexpired terms, and they shall have and possess all the powers conferred by this act. One of said board shall retire each year in order of their election.

§ 3. At the annual election which shall be held on the first Tuesday of March in each year, between the hours of five and eight o'clock, P. M., at the school-house or other convenient place in said district, there shall be elected one member of the board of education for five years, and also one inspector of common schools for one year. None but citizens entitled to vote for State officers and liable to taxation in said district for school purposes shall vote at said school election. Such election shall be held by three inspectors who shall have been elected at the preceding school election. But in all cases in which the said inspectors refuse or fail to act, inspectors shall be appointed in their places by the board of education. The voting shall be by ballot, and the ballots shall be indorsed "board of education, district number three." Said election and all other elections provided for by this act, shall be conducted in the same manner as the annual election for village or State officers.

THE BOARD OF EDUCATION — ITS DUTIES AND ITS POWERS.

§ 4. The said board of education may make all necessary by-laws for their government; they shall have the control and management of all the common schools within the said district and all the property belonging to the same, and be subject to the supervision of the Superintendent of Public Instruction as provided by the general school laws for trustees, and they shall provide for keeping a school or schools in said district, at least for twenty-eight weeks in each year, and as much longer as practicable.

§ 5. The said board shall appoint a collector who shall perform the duties and have the powers of a district collector, or they may employ the town or village collector for that purpose, and such collector shall collect and pay over the school moneys assessed upon the said district to the treasurer of the board of education, in the same manner and under the same conditions as are imposed by the laws of the town or village of which he is collector.

§ 6. The said board of education shall provide for and cause to be held, at least two general examinations of the pupils in each department of the schools, by a competent person or persons of recognized ability, with a view to mark the proficiency attained by the scholars. The first examination shall be held in the month of June, open to the public; the second at such time as may seem most practicable in the judgment of the board, and previous to the semi-annual promotions. The said board shall also provide for an examination of the teachers employed, and for all others who may apply for appointments to teach in the schools of the district, for the purpose of determining the grade and qualifications of such teachers. These examinations shall be made in accordance with such regulations as the board may adopt, with the concurrence of the school inspectors, and the results of all examinations shall be made known in writing by the authorized examiner, and shall accompany the report to be published annually by the said board of education.

§ 7. The said board shall appoint one or more of its members a committee to visit the schools at least once a week during the time they are in session, for the purpose of ascertaining if any and what supplies are needed, to see that the regulations are maintained and discipline properly enforced.

§ 8. Whenever additional school accommodations are required, the said board of education are hereby authorized and empowered to raise a sum not exceeding one thousand dollars, by tax on said district, to be levied and collected in the same manner as taxes are authorized by the general school law to be levied and collected in school districts of this State.

§ 9. The said board of education are hereby authorized and empowered for the general purposes of this act, to levy and collect by tax in each year upon the taxable property of said district, such sum as may be necessary, not exceeding in amount the sum of one-half of one per centum on the value of such taxable property, as the same shall be assessed by the assessors of the town of Newtown; and the said board of education shall add to their warrant for the collection of such taxes, such amount as they may deem proper for fees for collection, not exceeding five per centum on the amount collected.

§ 10. The supervisor of the town of Newtown shall pay over to the treasurer of the said board of education all the moneys to which said district number three shall be entitled for school purposes.

§ 11. The said board of education shall have the same control and charge of the district library, and be subject to the same regulations in regard to it, as are trustees of school districts; they may appoint a librarian and make additions to the library, and, with the approval of the Superintendent of Public Instruction, such regulations for the management thereof as they may deem necessary.

§ 12. Whenever the said board of education shall deem it necessary to buy land and to erect one or more school-houses in said district, they shall submit the plans and estimated cost of such land and buildings to the electors of such district, at a special meeting called for that purpose, of which meeting ten days' notice shall be given, by advertisement, or by posting of notices in five public places in said district, and no business shall be transacted but that stated in the notice calling said special meeting. And if a majority of such electors shall vote in favor of the proposed purchase of land and of the erection of the proposed new school-house or houses, the said board may proceed to make such purchase and to erect said school buildings, and if the sums authorized to be raised by sections eight and nine of this act shall be insufficient to pay the cost of such lands and buildings, then the said board are hereby empowered to raise and collect such additional sums, not exceeding five hundred dollars annually, until the debt incurred is liquidated; such additional sums shall be levied

and collected in the same manner as provided in sections eight and nine of this act. The said board shall advertise for proposals, and the contracts shall be awarded to the lowest responsible bidders.

§ 13. The said board of education shall hold regular monthly meetings in the school-house or other convenient public place, on the last Friday of every month, between the hours of six and ten o'clock P. M., which shall be open to the public for the purpose of hearing reports or complaints, and for the transaction of general business by the board. Special meetings may also be called by the president of the board of education or any three members thereof. The clerk shall notify the school officers, and shall state in the call the object of the meeting, if otherwise than for the completion of unfinished business.

§ 14. The board of education shall cause to be prepared, and submit in writing annually, a full report of their proceedings; and shall state therein the number of teachers employed, their names, residences and the salaries paid to each; the number of schools, and of pupils attending the same; the amount of school moneys received and from what sources and expenditure of the same; and generally on all matters of interest relating to the schools in said district. The report shall be placed on record and preserved for future use, and shall be printed (with the inspector's report) for the information of the tax payers, in pamphlet form, or be published in some newspaper published in the county.

#### DUTIES AND POWERS OF THE SCHOOL INSPECTOR.

§ 15. The school inspector for said district number three shall take office on the first day of April following his election; he shall attend the regular and special meetings of the board of education, and may recommend or oppose any appropriations for school purposes, and confer with the board in the appointment of teachers and others, but shall not vote. He shall visit the schools in his district at least four times in each year, for the purpose of ascertaining the condition of the school buildings, and the different departments of the schools, and to report on the same:

1. In relation to their sanitary condition;
2. The number in the classes, and the studies pursued;
3. The proficiency of the pupils;
4. The attendance of teachers and scholars;
5. The time of assembling and dismissing, and the number and length of the recesses allowed.

It shall be the duty of the inspector to oversee all repairs made, and to note the quality and quantity of supplies and materials furnished by the order of the board. He shall audit all bills or claims for salaries, repairs, materials, books and supplies; which, when so audited and passed by a vote of a majority of the board of education, shall be paid by the treasurer of said board of education. The inspector shall report annually, before his term expires, the amount of school moneys received from the State, as well as the amount raised in the district for school purposes, and also for what purposes the same has been expended, the accommodation afforded, and the state of the school property, and also on all matters affecting the general management of the schools in his district, and shall in pursuance of his duties recommend such changes, alterations and improvements as may seem to be required, and in his judgment sufficiently important to insure the better discipline, the proper economy, and to extend the usefulness of the schools.

§ 16. Every person elected to the board of education, or as inspectors for said district number three, under this act, shall be entitled to receive, and the inspectors of election shall give a certificate, stating the time for which such candidate has been elected, and whether for a full term or to fill a vacancy, and every officer elected or appointed, neglecting or refusing to file his certificate, or refusing or neglecting to attend three successive meetings of the board of education of said district, without satisfactory cause being shown, the seat of such school officer shall be declared vacant, and the board shall proceed to fill such vacancy until the ensuing election.

§ 17. No member of the board of education or inspector, elected or appointed under the provisions of this act, shall be or become directly or indirectly interested by way of commission or otherwise, in any contract or undertaking for the erection of new school-house, for purchasing of land or for the furnishing of any books or other supplies or materials, or for the performing of any labor or work for any of the school sites or buildings under their charge, nor shall the board hereafter employ or appoint any person to whom a salary is to be paid, who is within four degrees of relationship by blood or marriage to any member of said board of education, unless by a unanimous vote of said board.

§ 18. All acts or parts of acts pertaining to said school district which are inconsistent with this act are hereby repealed.

#### NEW UTRECHT.

[*Chap. 925, Laws of 1867, p. 2310, vol. 2.*]

SECTION 1. All license fees provided for by the act to regulate the sale of intoxicating liquors within the metropolitan police district of the State of New York, passed April sixteenth, eighteen hundred and sixty-six, and all fines therein provided for which shall hereafter be received by the board of excise of the said metropolitan police district, from the town of New Utrecht, in the county of Kings, shall, after deducting the necessary expenses of collection and the amounts otherwise provided by law, be paid over to the supervisor of the town, and shall be applied by him to the payment of the wages of the teachers of the different districts in proportion to the amount of scholars in each district in the said town.

## CITY OF NEW YORK.

[*Laws of 1851, chap. 386, as amended by chap. 301 of 1853, chap. 101 of 1854, chap. 267 of 1854, by chap. 69, Laws of 1865, and chap. 351, Laws of 1864.*]

[Section 1 is repealed by section 11, of chapter 351, Laws of 1864, and the first ten sections of the latter act are substituted therefor. See *post.*]

## OF THE BOARD OF EDUCATION—ITS POWERS AND DUTIES.

§ 2. The commissioners of common schools shall constitute a board of education for the city and county of New York. They shall meet on the second Wednesday of January, in each year, for the purpose of organization, and thereafter for the transaction of business as often as they may determine; they shall elect one of their number president, and shall appoint a clerk, and as many assistant clerks and other officers for the transaction of the business of the board as may be necessary, who shall severally hold their offices during the pleasure of the board, and whose respective duties, powers and compensation shall be regulated and determined by the board.

The board of education shall have power:

1. To take and hold property, both real and personal, devised or transferred to it for the purposes of public education in the city of New York;

2. To appoint a city superintendent of schools, and one or more assistant superintendents, and also a superintendent of school buildings, whose respective duties, powers, salaries and terms of office, except as herein otherwise provided, shall be regulated and determined by the board of education, and to employ, under the superintendent of school buildings, necessary workmen, and provide necessary materials for repairing, altering and enlarging school or other buildings; but this provision shall not be construed to compel the trustees of any ward to use or employ such workmen or materials for any purpose whatever;

3. To remove from office any school officer who shall have been directly or indirectly interested in the furnishing of any supplies or materials, or in the doing of any work or labor, or in the sale or leasing of any real estate, or in any proposal, agreement, or contract for any of these purposes, in any case in which the price or consideration is to be paid, in whole or in part, or directly or indirectly, out of any school moneys, or who shall have received from any source whatever, any commission, or compensation in connection with any of the matters aforesaid; and any school officer who shall violate the preceding provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one thousand dollars, and imprisonment in the city prison not exceeding one year, and shall also be ineligible to any school office. The board shall also have power to remove from office any school officer who shall have been guilty of immoral or disgraceful conduct in any matter connected with his official duties, or which tends to discredit his office, or the school system. If one or more school officers or tax payers of the city of New York shall present a written charge to the board of education, accusing any school officer of a violation of or a liability to any of the provisions of this section, it shall be the duty of the said board to cause the same to be fully investigated. All testimony taken upon such investigation shall be under oath; and the court of common pleas shall have power, upon the application of the board of education, to compel any witness who may be summoned to appear and testify before the said board, or any committee thereof. [*As amended by section 13, Laws of 1864, chap. 351.*]

4. To establish new schools, as hereinafter provided;

5. To draw from the moneys which shall be raised for the purpose of public education such sums as may be required for the purpose of defraying the necessary incidental expenses of the board, and such further sums as may be required for the payment of the salaries of such clerks and other officers as may be appointed by virtue of the authority vested in the board by this act, and of such other expenses as may be necessarily incurred by the board in pursuance of the provisions of this act;

6. To visit and examine the schools subject to the provisions of this act;

7. To make rules of order and by-laws for the government of the board, its members and committees, and general regulations to secure proper economy and accountability in the expenditure of the school moneys;

8. To continue the existing free academy and organize a similar institution for females; and, if any similar institution is organized by the board of education, all the provisions of this act relative to the free academy shall apply to each and every one of the said institutions, now existing or hereafter established, as fully, completely and distinctly as they could or would if it was the only institution of the kind; to distinguish each existing and future institution by an appropriate title; and to purchase, erect, or lease sites and buildings for each and all of the said institutions; provided that no additional institution shall be authorized or organized by the board of education, unless a majority of the whole number of members of the said board shall vote in favor thereof;

9. To use and control the premises known as the hall of the board of education, at the corner of Grand and Elm streets, to direct the purposes for which the same may be occupied, and to make all the repairs, alterations and additions in and to the same which the board may deem advisable, and to provide such additional sites and buildings as may be necessary for the purposes of this act, the title of which shall, in all cases, be vested in the mayor, aldermen and commonalty of the city of New York;

10. To dispose of such personal property, used in the school or other buildings under the charge of the board, as the trustees or committees having the immediate charge thereof shall certify is no longer required for use therein; and all moneys realized by the sale of any such property shall be paid into the city treasury, for the same purposes as the moneys raised under the sixteenth section of this act;

11. And for the purposes of this act, the said board shall possess the powers and privileges of a corporation.

§ 3. It shall be the duty of the board of education.

1. On or before the fifteenth day of November, in each year, to report to the board of supervisors of said city and county an estimate of the amount, over and above the sum specified in the fifteenth section of this act, which will be required during the year for the purpose of meeting the current annual expenses of public instruction in said city for purchasing, leasing and procuring sites; for erecting buildings, and for furnishing, fitting up, altering, enlarging and repairing the buildings and premises under their charge; for the support of schools which shall have been organized since the last annual apportionment of the school moneys made by the board, and of such further sum or sums as may be necessary for any of the purposes authorized by this act; but the aggregate amount so reported shall not exceed the sum of ten\* dollars for each pupil who shall have actually attended and been taught the preceding year in the schools entitled to participate in the apportionment. And the board of supervisors of the county of New York are hereby authorized and directed to raise and collect by taxation, in the year one thousand eight hundred and sixty-seven, such sum as may be reported to them by the said board of education on or before the first day of June in said year, provided the sum reported does not exceed in the aggregate the sum of two dollars for each pupil, who shall have actually attended and been taught during the year one thousand eight hundred and sixty-six, in the schools entitled to participate in the apportionment aforesaid, and said sum to be in addition to the amount heretofore reported to them by said board of education, for the year one thousand eight hundred and sixty-seven, under the provisions of the first subdivision of section three of the act which is hereby amended. Provided, however, that the said increased amount shall be wholly expended in purchasing sites, erecting and furnishing school-houses, and, at least, one-half thereof for the accommodation of children in the primary department. There shall be appropriated the sum of fifty thousand dollars for each of the years eighteen hundred and sixty-seven and eighteen hundred and sixty-eight from the moneys to be raised under the provisions of this act, for the building and erection of a school building for colored children. The said building to be erected by the board of education as other school buildings are erected;

2. To apportion all the school moneys, which shall have been raised for the purpose of meeting the current annual expenses of public instruction, to the schools entitled to participate therein by the provisions of this act;

3. To file with the chamberlain of said city, on or before the first Monday of April in each year, a copy of their apportionment, stating the amount apportioned to the schools under the charge of the board of education, and to the trustees, managers and directors of the several schools enumerated in this act;

4. To continue to furnish through the free academy the benefit of education gratuitously, to persons who have been pupils in the common schools of the said city and county, for a period of time to be regulated by the board of education, not less than one year;

5. To supervise, manage and govern said free academy, and make all needful rules and regulations therefor; fix the number and compensation of teachers and others to be employed therein; prescribe the preliminary examination, and the terms and conditions on which pupils shall be received and instructed therein and discharged therefrom; direct the course of studies therein, and provide in all things for the good government and management of the said free academy; and purchase the books, apparatus, stationery and other things necessary and expedient to enable the said free academy to be properly and successfully conducted, and to keep the said building or buildings properly repaired and furnished. And the board, upon the recommendation of the faculty of the free academy, may grant the usual degrees and diplomas in the arts to such persons as shall have completed a full course of study in the said free academy;

6. To appoint annually a standing committee of not less than five persons of their number, who shall, subject to the control, supervision and approbation of the said board, constitute an executive committee for the care, government and management of the said free academy, under the rules and regulations prescribed as aforesaid, whose duty it shall be to make detailed reports to the said board of education, and, among other things, to recommend the rules and regulations which they deem necessary and proper for the said academy. The board of education may, at any regular meeting thereof, by a majority of all the members of the said board, remove any or all the members of the said committee, and appoint another person or persons in place of the member or members of the said committee so removed;

7. To make and transmit annually, on or before the first day of February in each year, to the common council of said city, and also to the secretary of the board of Regents of the University of the State of New York, a report, signed by the president and clerk of the board of education, and dated on the thirty-first day of December next preceding, which report shall state the names and ages of all the pupils instructed in such free academy during the preceding year, and the time that each was so instructed, specifying which of them have completed a full course of study therein, and which have received degrees, medals

\* Changed from four to five by chapter 124, Laws of 1863, and from five to eight by chapter 69, Laws of 1865, and from eight to ten by chapter 287, Laws of 1867.

and other special testimonials; a particular statement of the studies pursued by each pupil since the last preceding report, together with the books such student shall have studied, in whole or in part, and, if in part, what portion; an account or estimate of the library, philosophical and chemical apparatus, and mathematical or other scientific instruments belonging to such academy; the names of the instructors employed in said academy, and the compensation paid to each; what amount of moneys the board of education received during the year for the purposes of such academy, and from what sources, specifying how much from each, and the particular manner and the specific purposes for which such moneys have been expended; and such other information in relation to education in the said academy, and the measures of the board in the management thereof, as the said common council or the Regents of the University of the State of New York may from time to time require;

8. To provide evening schools, for those whose ages or avocations are such as to prevent their attending the day schools established by law, in such of the ward school-houses or other buildings used for school purposes, and in such other places in said city as they may from time to time deem expedient, and, also, a normal school or schools for teachers, which shall be attended by such of the teachers in common schools as the board of education by general regulations shall direct, under penalty of forfeiture of their situations as teachers by omitting to attend, which forfeiture shall be declared by the board of education; and to appoint teachers and furnish all needful supplies for the evening and normal schools;

9. To furnish all necessary supplies, or make regulations for furnishing such supplies, for the several schools under their care; but when such supplies are furnished by the board of education they shall be obtained by contract, proposals for which shall be advertised for the period of at least two weeks;

10. To make and transmit, between the fifteenth day of January and the first day of February, in each year, to the State Superintendent of Public Instruction and to the common council of the city of New York, a report, in writing, bearing date on the thirty-first day of December next preceding, stating the whole number of schools within their jurisdiction, specially designating the schools for colored children; the schools or societies from which reports shall have been made to the board of education within the time limited for that purpose; the length of time such schools shall have been kept open; the amount of public money apportioned or appropriated to said school or society; the number taught in each school; the whole amount of money drawn from the city chamberlain for the purposes of education during the year ending at the date of their report, distinguishing the amount received from the general fund of the State, and from all other and what sources; the manner in which such moneys shall have been expended; and such other information as the State Superintendent of Public Instruction may from time to time require in relation to common school education in the city and county of New York; and the report which the board of education is hereby required to make shall be held and taken to be a full compliance with every law requiring a report from the said board, or any officer of the city and county of New York, except the city superintendent, relative to the schools in the said city, or any matters connected therewith.

§ 4. If the board of education shall neglect to make such annual report within the time limited, the share of school moneys apportioned to the city and county of New York may, in the discretion of the State Superintendent of Public Instruction, be withheld until a suitable report shall have been rendered.

§ 5. The clerk of the board of education shall have charge of the rooms, books, papers and documents of the board, and shall, in addition to his duties as secretary of the board, perform such other clerical duties as may be required by its members or committees.

§ 6. All schools which have been organized under the act entitled "An act to extend to the city and county of New York the provisions of the general act in relation to common schools," passed April 11, 1842, and the acts amending the same, or organized or adopted under this act, shall be common schools, called "ward schools," or "ward primaries;" and each class shall be numbered consecutively, according to the time of their organization or adoption, and all such schools shall be under the supervision and government of the commissioners, inspectors and trustees of the ward in which they are located.

(Seventh section repealed by chapter three hundred and fifty-one, section eighteen, Laws of eighteen hundred and sixty-four.)

#### POWERS AND DUTIES OF COMMISSIONERS.

§ 8. It shall be the duty of the commissioners of common schools in the several wards:

1. To attend all the meetings of the board of education; and if any commissioner shall refuse or neglect to attend any three successive stated meetings of the board, after having been personally notified to attend, and if no satisfactory cause of his non-attendance be shown, the board may declare his office vacant;

2. To transmit to the board of education all reports made to them by the trustees and inspectors of their respective wards;

3. To visit and examine all the schools entitled to participate in the apportionment.

#### POWERS AND DUTIES OF INSPECTORS.

§ 9. It shall be the duty of the inspectors of common schools, or a majority of them, in their respective districts, to examine in respect to every expense certified as correct by a majority of the trustees of any ward in the district, and to audit every such expense which may be just and reasonable; and no expense shall be paid unless audited in this manner. They shall also examine, at least once in every quarter, all the schools in the district, in respect to the punctual and regular attendance of the pupils and teachers; the number,

fidelity and competency of the teachers; the studies, progress, order and discipline of the pupils; the cleanliness, safety, warming, ventilation and comfort of the school premises; and whether or not the provisions of the school laws in respect to the teaching of sectarian doctrines, or the use of sectarian books, have been violated; and call the attention of the trustees, without delay, to every matter requiring immediate action. They shall also, on or before the thirty-first day of December in each year, make a written report to the board of education and to the board of trustees in respect to the condition, efficiency and wants of the district in respect to schools and school premises. [As amended by chapter 351, Laws of 1864.]

#### POWERS AND DUTIES OF TRUSTEES.

§ 10. It shall be the duty of the trustees for each ward, and they shall have the power:

1. To have the safe keeping of all the premises and other property used for or belonging to the ward schools and the ward primaries in their respective wards:

2. Under such general rules and regulations, and subject to such limitations as the board of education may prescribe, to conduct and manage the said schools; to furnish all needful supplies therefor, and to make all needful repairs, alterations and additions in and to the school premises. [As amended by § 19 of chapter 351, Laws of 1864.]

3. To procure, as may be necessary, blank books, in one of which a statement of the amounts of all moneys received and paid by the trustees or otherwise, for or on account of each of the schools conducted by them, and of all movable property belonging to each school, shall be entered at large and signed by such trustees; and in one book minutes of their meetings shall be kept; and in other books the principal teacher of each school and department shall enter the names, ages and residences of the scholars attending the school, the name of a parent or guardian of each scholar, and the days on which the scholars shall have respectively attended, and the aggregate attendance of each scholar during the year; also the days on which each school shall have been visited by the city and assistant superintendents of schools, and the school officers of the ward, and the members of the board of education or any of them, which entries shall be verified by the oath or affirmation of the principal teacher in such school or department. The said books shall be preserved by the trustees as the property of the school, and shall be delivered to their successors;

4. To make, at least five days before the first day of January in every year, or such other day as may be designated by the board of education, in the case of a school kept open after the twenty-fifth day of December, and transmit to the board of education a report in writing, dated the thirty-first day of December, which shall be signed and certified by a majority of the trustees, and which report shall state the whole number of schools within their jurisdiction, especially designating the schools for colored children; the length of time each school shall have been kept open; the whole number of scholars over four and under twenty-one years of age who shall have been taught, free of expense to such scholars, in their schools during the year ending with the date of the report, which number shall be ascertained by adding to the number of children on register, at the commencement of each year, the number admitted during that year, which shall be considered the total for that year; the average number that has actually attended such schools during the year, to be ascertained by the teacher's keeping an exact account of the number of scholars present every school time or half day, which, being added together and divided by four hundred and sixty, or, if less than a year, by the number of school sessions, shall be considered the average of attending scholars, which average shall be sworn or affirmed to by the principal teacher of the school; a detailed statement of the amount of moneys received for or paid on account of their respective schools during the year from or by the chamberlain of the city, and of the purposes for and the manner in which the same shall have been expended; and a particular account of the state of the schools, and of the property and affairs of each school under their care; and the titles of all books used, with such other information as the board of education shall require; and for the purposes of this act each department shall, whenever practicable, be considered as a separate school;

5. To hold as a corporation all personal property vested in or transferred to them for school purposes in their respective wards;

6. To render, at the expiration of their respective terms of office, to their successors a just and true account in writing of all moneys received by them for school purposes, and of the manner in which the same shall have been expended, and to pay any balance which may remain in their hands to their successors;

7. To meet stately at times, to be by them appointed, and to declare vacant, by the votes of a majority of the trustees of the ward, the seat of any person, elected or appointed as a trustee, who shall refuse or neglect, without satisfactory cause shown by him to the said trustees, to attend any three successive stated meetings of the trustees, after having been previously notified to attend; and to notify the clerk of the board of education, at least twenty days previous to any general election, of any vacancy that will exist in the school offices of said ward at the expiration of their present year, with the cause or reason of such vacancy or vacancies.

#### OF THE CITY SUPERINTENDENT.

§ 11. The city and assistant superintendents of schools shall take and subscribe, before the clerk of the board of education, the oath of office prescribed by the Constitution of this State; shall each hold office for the term of two years and until his successor is appointed, subject to removal by the board on complaint, for cause stated; shall respectively receive such compensation as the board of education may designate, which shall not be changed during the term of office of any incumbent; and shall be subject to such rules and regula-

tions as the board of education may establish. It shall be specially the duty of the city superintendent:

1. To visit every school under the charge of the board of education as often as once in each year; to inquire into all matters relating to the government, course of instruction, books, studies, discipline and conduct of such schools, and the condition of the school-houses and of the schools generally, and to advise and to counsel with the trustees in relation to their duties, the proper studies, discipline and conduct of the schools, the course of instruction to be pursued, and the books of elementary instruction to be used therein; and to examine, ascertain and report to the board of education, whether the provisions of the act in relation to religious sectarian teaching and books have been violated in any of the schools of the different wards of the city; and to make a monthly report to the board of education, stating which of the schools have been visited by him, and adding such comments in respect to the matters above specified as he may consider necessary and advisable; and to transmit to the respective boards of ward trustees copies of so much of such reports as relate to schools under their management;

2. Under such general rules and regulations as the board of education may establish, to examine into the qualifications of persons proposed as teachers in any of the schools under the charge of the board. Such examination shall be conducted by the city superintendent of schools, or such one of his assistants as he may designate, in the presence of at least two inspectors of common schools, who shall be designated for the purpose by the by-laws of the board of education. Licenses shall be granted to those persons found upon such examination to be entitled thereto, which shall be in the form prescribed by the said by-laws, shall be signed by the city superintendent, and by at least two inspectors designated for the purpose, who shall certify that they were present at the examination, and concur in granting the license. The license of any teacher may be revoked for any cause affecting the morality or competency of the teacher, by the written certificate of the city superintendent, and the written concurrence of two of the inspectors for the district in which the teacher is employed; but no such action shall be taken until at least ten days previous notice has been allowed; nor shall it take effect until such certificate of revocation has been filed in the office of the clerk of the board of education, and a copy served upon the teacher. It shall be the duty of the city superintendent to re-examine any teacher upon the written request of any two inspectors of the district, or three trustees of the ward in which the teacher is employed. Any teacher whose license has been revoked as aforesaid may appeal to the State Superintendent of Public Instruction, within ten days after service of a copy of the certificate of revocation, by the service of a written notice of appeal upon the city superintendent, and in case such appeal is taken the teacher shall not be disqualified until the revocation is confirmed by the State Superintendent. The city superintendent in his annual report to the board of education, shall include a list of the licenses granted and revoked by him. *[As amended by § 16, chapter 351, Laws of 1864.]*

3. Generally, by all the means in his power, under the regulations of the board of education in respect thereto, to promote sound education, elevate the character and qualifications of teachers, improve the means of instruction, and advance the interests of the schools committed to his charge.

§ 12. The city superintendent shall be subject to such general rules and regulations as the State Superintendent of Public Instruction may prescribe; and appeals from his acts and decisions may be made to the Superintendent in the same manner and with like effect as in cases now provided by law, and he shall make annually to the State Superintendent of Public Instruction, at such times as shall be appointed by him, a report, in writing, containing the whole number of schools in the city and county, distinguishing the schools from which the necessary reports have been made to the board of education by the commissioners, inspectors and trustees of common schools, and containing a certified copy of the reports of the board of education to the clerk of the city and county, with such additional information as the State Superintendent of Public Instruction may require.

§ 13. It shall be the duty of the board of education, by general rules and regulations, to provide a proper classification of studies, scholars and salaries, in such manner that, as near as practicable, the system of instruction pursued in the common schools and the salaries paid to teachers shall be uniform throughout the city.

#### OF THE SUPPORT OF SCHOOLS.

§ 14. Whenever the clerk of the city and county shall receive notice from the State Superintendent of Public Instruction of the amount of moneys apportioned to the county of New York for the support and encouragement of common schools therein, he shall immediately lay the same before the board of supervisors of said county; and the chamberlain of the said city shall apply for and receive the school moneys apportioned to the said county as soon as the same become payable, and place the same in the city treasury, for the same purposes as the moneys raised under the sixteenth section of this act.

§ 15. The said board of supervisors shall annually raise and collect, by tax upon the inhabitants of the said city and county, a sum of money, equal to the sum specified in such notice, at the time and in the same manner as the contingent charges of the said city and county are levied and collected, also a sum of money equal to one-twentieth of one per cent of the value of the real and personal property in the said city liable to be assessed thereon, and pay the same into the city treasury, to be applied to the purposes of common schools in the said city; and the board of education shall apportion the money so raised to each of the schools hereafter provided for by this act, except the free academy and the evening schools, according to the number of children over four and under twenty-one years of age who were actual residents of the city and county of New York at the time of their attend-

ance on such schools, without charge, the preceding year; and the average shall be ascertained by adding together the number of such children present at each morning and afternoon session of not less than three hours, and dividing the sum by four hundred and sixty; and if any school shall have been organized since the last annual apportionment, the average shall be ascertained by dividing by a number corresponding to the actual number of morning and evening sessions, of not less than three hours each, held since the organization of such school; and the sum apportioned to any schools, other than the ward schools, shall be paid to the trustees, managers or directors of such schools, respectively, by drafts on the city chamberlain, to be signed by the president and clerk of said board, and made payable to the order of the treasurers of said trustees, managers or directors.

§ 16. Said board of supervisors shall also raise and collect, at the same time and in the same manner, such additional sum or sums as the board of education, in pursuance of the provisions of the first subdivision of the third section of this act, shall have reported to be necessary for the purposes therein mentioned. Such moneys shall be paid into the city treasury, and shall, together with the amounts apportioned to the schools under the charge of the board of education, be paid by the chamberlain of the said city upon the drafts drawn on him by the board of education, signed by the president and countersigned by the clerk of the board, and by the commissioners, or one of them, of the ward for which the money is to be paid, except such sums as shall be drawn for purposes other than the expenses of ward schools, which shall be paid by said chamberlain upon drafts drawn on him by said board, signed by the president and clerk, and countersigned by the chairman of the finance committee of said board; and all drafts shall be made payable to the person or persons entitled to receive the same, except that the payment of wages and salaries may be made by pay-rolls, upon which each person shall separately receipt for the amount paid to such person; and in every case of payment by a pay-roll, the draft for the aggregate amount of wages or salaries included therein shall be made payable to the superintendent, principal, teacher or other officer designated for the purpose by the by-laws of the board of education.

§ 17. If any of the said newly organized ward schools, by reason of peculiar circumstances, shall be equitably entitled to a larger sum than they will receive under an apportionment made as aforesaid, then the board of education shall be authorized, and they are hereby required, to make to such schools such further allowance out of the school moneys as they, the board of education, shall deem just and proper.

§ 18. No school shall be entitled to or receive any portion of the school moneys in which the religious doctrines or tenets of any particular Christian or other religious sect shall be taught, inculcated or practiced, or in which any book or books, containing compositions favorable or prejudicial to the particular doctrines or tenets of any particular Christian or other religious sect, or which shall teach the doctrines or tenets of any other religious sect, or which shall refuse to permit the visits and examinations provided for in this act. But nothing herein contained shall authorize the board of education to exclude the Holy Scriptures, without note or comment, or any selections therefrom, from any of the schools provided for by this act; but it shall not be competent for the said board of education to decide what version, if any, of the Holy Scriptures, without note or comment, shall be used in any of the schools; provided that nothing herein contained shall be so construed as to violate the rights of conscience as secured by the Constitution of this State and of the United States.

§ 19. If the school moneys apportioned to the common schools, agreeably to the previous section of this act, shall exceed the necessary and legal expenses of either of such schools, the board of education shall authorize the payment only of such sum or sums as shall be sufficient to provide for such expenses, and any deficiency in the sums apportioned to meet the necessary and legal expenses of public education in the said schools shall be supplied by the common council of the said city; and they are hereby authorized and directed to raise by loan, in anticipation of the annual tax, such sum or sums as shall be necessary to meet such deficiency. And the board of education shall in all cases certify to the common council the cause of such deficiency, and that the same was unavoidable; and, unless such certificate shall be made, the said common council may refuse to raise the sum required to meet such deficiency.

§ 20. The board of education shall require from the executive committees conducting schools by appointment of the board, and from the trustees, managers or directors of the corporate schools entitled to participate in the apportionment of school moneys, a report in all respects similar to that required from the trustees of each ward by the tenth section of this act. And, in making the apportionment among the several schools, no share shall be allotted to any school or society from which no sufficient annual report shall have been received for the year ending on the last day of December immediately preceding the apportionment.

§ 21. Whenever an apportionment of the public money shall not be made to any school, in consequence of any accidental omission to make any report required by law or to comply with any other regulation or provision of law, the board of education may, in its discretion, direct an apportionment to be made to such school, according to the equitable circumstances of the case, to be paid out of the public money on hand, or, if the same shall have been distributed, out of the public money to be received in a succeeding year.

#### OF THE SCHOOLS ENTITLED TO PARTICIPATE IN THE APPORTIONMENT.

§ 22. The New York orphan asylum school, the Roman Catholic orphan asylum school, the schools of the two half-orphan asylums, the school of the mechanics' society, the school of the society for the reformation of juvenile delinquents in the city of New York, the Hamilton free school, the school for the Leake and Watts' orphan house, the school connected



with the almshouse of the said city, the school of the association for the benefit of colored orphans, the schools of the American female guardian society, the schools of the society for the promotion of education among colored children [the schools of the Five Points house of industry and the ladies' home missionary society, *see chapter 450 of 1855*], the schools organized under the act entitled "An act to extend to the city and county of New York the provisions of the general act in relation to common schools," passed April 11, 1842, or an act to amend the same, passed April 18, 1843, or an act entitled "An act more effectually to provide for common school education in the city and county of New York," passed May 7, 1844, or any of the acts amending the same, and including such normal schools for the education of teachers as the board of education may organize, and the normal school of the public school society for the education of teachers, and such schools as may be organized under the provisions of this act, shall be subject to the general supervision of the board of education, and shall be entitled to participate in the apportionment of the school moneys, as provided for by this act, but they shall be under the immediate direction of their respective trustees, managers and directors, as herein provided.

## OF NEW SCHOOLS.

§ 23. The board of education may, with the consent of a majority of the trustees of the ward, or without such consent, by a vote of two-thirds of the board of education, discontinue any grammar, primary, evening, or colored school, and the said board may also authorize the establishment of a new school, upon the written application of a majority of the trustees for the ward. It shall be the duty of the board of education to decide finally upon every such application within thirty-five days after the same is presented to it; and if the said board shall omit to do so, or shall deny the application, and a majority of the inspectors for the district shall certify that there is probable cause for granting the application, the trustees may appeal to the State Superintendent of Public Instruction, whose decision in the matter shall be binding upon all the parties, and, if adverse to the application, the same shall not be renewed during the term of one year next thereafter. *[As amended by § 17, chapter 351, Laws of 1864.]*

§ 24. Upon a decision favorable to the establishment of a school or schools in any of the wards of said city, it shall be lawful for the school officers of said ward to proceed to organize one or more schools, such as may be authorized by the board of education, and procure a school-house, by purchasing or hiring the same, or by procuring a site and erecting a building thereon, according to plans and specifications and contracts which shall have been duly filed with and approved by the board of education; the erection of which said building, and the fitting up thereof, and the fitting up of any hired building, shall be done by contract, proposals for which shall be advertised for two weeks previous to deciding upon estimates thereon, unless such fitting up shall not exceed the sum of two hundred dollars; and the expense of establishing and organizing any school, as above mentioned, shall be levied and raised pursuant to the provisions of this act.

§ 25. The title to all school property, real and personal, purchased with any moneys derived from the distribution or apportionment of the school moneys, or raised by taxation in the city of New York, shall be vested in the mayor, aldermen and commonalty of said city, but shall be under the care and control of the board of education for the purposes of public education, and all suits in relation to the same shall be brought in the name of said board; and no contract or contracts shall be made by the school officers of any ward, for the purchase of any site, without the consent of the board of education, or for the erection or fitting up or repairing of any building, when such repairs shall exceed in amount the sum of two hundred dollars, as authorized in this act, until a statement in writing of the amount required for that purpose shall have been presented to the board of education by said school officers, and, together with a copy of the working drawings, plans and specifications of the work to be done, pursuant to the provisions of this act, shall have been duly filed and approved of, as herein required, and an appropriation shall have been made by the board of education therefor.

§ 26. The trustees, managers and directors of any of the corporate schools entitled to participate in the apportionment of the school moneys may at any time convey their school-houses and sites to the corporation of the city of New York, and transfer any of their schools to the board of education, on the terms and in the manner to be agreed upon and prescribed by the board of education, so as either to merge the said schools in the ward schools or adopt them as ward schools; and the same shall then be ward schools, subject to all the rules, duties and liabilities, and enjoy the same rights, as if they had been originally established as ward schools.

## OF THE DISCONTINUANCE OF SCHOOLS.

§ 27. Whenever, owing to any nuisance or other circumstances in the immediate vicinity of any school, or to the small attendance of scholars therein, or other sufficient reason, it shall appear to the board of education necessary and proper to discontinue such school in any of the wards of this city, the said board shall give notice to the trustees of said school of its intention to consider the propriety of such discontinuance; and in thirty days after such notice may proceed to investigate the matter, and if a majority of the school officers of the ward shall consent to the same, and if the said board shall determine by a vote of a majority of all the members thereof that it is proper to close the same, it shall be the duty of said board to withhold all moneys which have been apportioned or appropriated for the support of said school, and the said school shall not thereafter participate in any subsequent apportionment of the school moneys. So soon as the same shall take effect, the controller of the city shall be notified thereof by the said board, and the said school-house and site may thereupon be used or disposed of as a part of the general property of the city.

## MISCELLANEOUS PROVISIONS.

§ 28. The common council of the city of New York are hereby authorized and directed to raise by loan, in anticipation of the taxes, when necessary, all moneys required for erecting, purchasing or leasing school-houses and procuring sites therefor, and the fitting up and furnishing thereof, and for alterations in or additions to the present school buildings, or required for any other of the purposes authorized by this act.

§ 29. All expenses incurred for the support of common schools in the respective wards shall be certified by the trustees of common schools in such ward, or a majority of them, and delivered to the inspectors of said ward; and it shall be the duty of said inspectors to examine and audit the same, and, upon said inspectors being satisfied of their correctness, to certify the same to the board of education. All bills audited and paid shall be filed with the board of education.

§ 30. No compensation shall be allowed to the commissioners, inspectors or trustees of common schools for any services performed by them, but the commissioners and inspectors shall receive their actual and reasonable expenses while attending to the duties of their office, to be audited and allowed by the board of education.

§ 31. Every school officer who shall refuse or neglect to render an account, or to pay over any balance in his hands at the expiration of his term of office, shall for each offense, forfeit the sum of fifty dollars, which sum, together with said unpaid balance, shall be sued for and collected by the board of supervisors, who shall prosecute without delay for the recovery of such forfeiture, together with the unpaid balance; and in case of the death of such school officer, suit may be brought against his representatives, and all moneys recovered, after deducting expenses, shall be placed at the disposal of the board of education.

§ 32. Every person in the employ of the board of education, and every school officer, and every officer or teacher of a school or society, who shall willfully sign a false report to the board of education, shall, for each offense, forfeit the sum of twenty-five dollars, and shall be deemed guilty of misdemeanor; and every such person or officer who shall willfully misapply any of the public funds committed to his care shall be deemed guilty of embezzlement.

§ 33. The following shall be substantially the form of oath or affirmation to be made by the teacher:

"A. B., of the city of New York, teacher of \_\_\_\_\_ No. \_\_\_\_\_ department, being duly sworn or affirmed, declares and says that, to the best of (his or her) knowledge and belief, the average number of children, actual residents of the city and county of New York at the time of attending said school between the age of four and twenty-one years, who attended said school or department, each school-time or half-day, from the day of \_\_\_\_\_ to the first day of January, \_\_\_\_\_, was \_\_\_\_\_, said average having been obtained by adding together the number of scholars present each school-time or half-day, and dividing the total by four hundred and sixty, agreeably to the fifteenth section of this act."

§ 34. If any suit which shall hereafter be commenced against the commissioners or trustees of common schools for any act performed by virtue of or under color of their offices, or for any refusal or omission to perform any duty enjoined by law, and which might have been the subject of an appeal to the superintendent, no costs shall be allowed to the plaintiff in cases where the court shall certify it appeared on the trial of the cause that the defendants acted in good faith. But this provision shall not extend to suits for penalties, nor to suits or proceedings to enforce the decisions of the State Superintendent of Public Instruction.

§ 35. All children between the age of four and twenty-one, residing in the city and county, shall be entitled to attend any of the common schools therein; and the parents, guardians or other persons having the custody or care of such children shall not be liable to any tax, assessment or imposition for the tuition of any children other than is hereinbefore provided.

§ 36. The free academy in the city of New York shall be entitled to participate in the distribution of the income of the literature and other funds, in the same manner and upon the same conditions as the other academies of the State and the Regents of the University of the State of New York shall pay annually to the board of education of the city and county of New York the distributive share of the said funds to which the said free academy shall by law be entitled, and which shall be applied and expended for library books for the said free academy.

§ 37. The clerk of the board of education is hereby authorized to administer oaths and take affidavits in all matters appertaining to the schools in the city and county of New York, and for that purpose shall possess all the powers of a commissioner of deeds, but shall not be entitled to any of the fees or emoluments thereof.

§ 38. No school officer shall be interested in any contract, payments under which are to be made in whole or in part out of moneys derived from the school fund or raised by taxation for the support of common schools. No teacher employed in any of the schools entitled to participate in the apportionment of the school moneys shall hereafter be eligible to the office of commissioner, inspector or trustee of common schools.

§ 39. The superintendent of school buildings shall take and subscribe before the clerk of the board of education the oath prescribed by the Constitution of this State, and give such security for the faithful performance of the duties of his office as the board of education may direct; and the department under his charge shall be subject to such rules and regulations as the said board may establish, one of which shall prohibit the performance by him of any work on other account similar to that performed under the regulations so established.

§ 40. The act entitled "An act to extend to the city and county of New York the provisions of the general act in relation to common schools," passed April 11, 1842, and an act

amending the same passed April 18th, 1843, and an act entitled "An act more effectually to provide for common school education in the city and county of New York," passed May 7th, 1844, and the several acts amending the same, passed respectively on May 11th, 1847, March 27th, 1848, April 11th, 1849, and the act authorizing the board of education of the city of New York to establish evening schools for the education of apprentices and others, passed March 25th, 1848, and an act authorizing the board of education of the city and county of New York to establish a free academy in said city, passed May 7th, 1847, and all other acts and parts of acts inconsistent with or repugnant to the provisions of this act, are hereby repealed.

[*Laws of 1853, Chap. 217.*]

[The only sections of this act which relate to public instruction are the following:]

§ 16. All the ordinary appropriations made for the support and the government of the almshouse department shall, before the same are finally made, be submitted by the governors of the almshouse to a board of commissioners, consisting of the mayor, recorder, comptroller, the president of the board of aldermen, and the president of the board of councilmen; if the said commissioners approve of the appropriation, they shall immediately report the same to the board of supervisors; if they shall disapprove of the same, they shall return them with their objections, to the governors of the almshouse for reconsideration; and in case the said governors shall upon a reconsideration adhere by a vote of two-thirds of all the governors then in office to the original appropriations, they shall return them to the commissioners, whose duty it shall be to report to the board of supervisors.

§ 17. The board of education shall also submit in like manner all appropriations required by them to the commissioners named in the last preceding section, and said appropriations shall be subject to all the provisions of said section, so far as the same may be applicable.

[*Laws of 1853, chap. 301.*]

SECTION 1. The public school society of the city of New York shall, on or before the first day of September, eighteen hundred and fifty-three, convey and transfer, according to this act, by deed to be approved by the counsel to the corporation of said city, all their corporate property to the mayor, aldermen and commonalty of the city of New York, subject to all liens and incumbrances thereon and the debts of said society; and thereupon the said property shall belong to the said mayor, aldermen and commonalty, in the same manner as the school property now used and occupied by the ward schools belongs to the said mayor, aldermen and commonalty; and the schools of the public school society shall be ward schools, subject to the same control, and enjoy the same rights and privileges, as if originally organized as ward schools; but such portions of the property aforesaid as have been granted to the public school society, subject to the trust that the same shall be devoted to the purposes of common schools, shall be held subject to such trust, and the premises now known as trustees' hall, situated at the corner of Grand and Elm streets, shall be used and occupied by the board of education, as long as they may think advisable, for the meetings and business thereof, and for such educational purposes as the said board may direct; and the residue of the property aforesaid shall be conveyed for the purposes of common schools, in the same manner as the property purchased by the authority of the board of education for the purpose aforesaid.

§ 2. The public school society shall, at the time of such conveyance, make a detailed statement of all their property, real and personal, and of all their debts of every description existing at the time of such conveyance, which shall be certified as a full, just and true statement of all such property and debts by their president, treasurer and secretary, and shall deliver one copy thereof, so certified, to the comptroller of the city of New York, and the other copy, so certified, to the clerk of the city and county of New York, for the use of the board of supervisors of the city and county of New York; and the said board of supervisors shall thereupon proceed to audit and determine the amount of all the debts of the said society, and shall cause the same to be certified and filed with the said comptroller.

§ 3. Upon the amount of the debts of the said society being so certified and filed, it shall be lawful for the mayor, aldermen and commonalty of the city of New York, and it shall be their duty, to raise by loan, a sum not exceeding the amount of the debt so certified and filed, by the creation of a public fund or stock, to be called "the public education stock of the city of New York, of the year one thousand eight hundred and fifty-three," which shall bear an interest of five per cent per annum, and which shall be redeemable at a period of time not more than twenty years from the passage of this act. The said mayor, aldermen and commonalty shall determine of what number of shares the said stock shall consist; and the said stock shall be disposed of by public competition, under the direction of the commissioners of the sinking fund of the city of New York. The moneys raised by virtue of this act shall be applied for the purpose of paying and discharging all the said debts; any deficiency, by reason of interest accruing on the said debts, after the same are so certified and filed, shall be paid by the said mayor, aldermen and commonalty out of the city treasury; and any excess, by reason of the said stock being disposed of at a premium, shall be held as a part of the sinking fund hereinafter provided.

§ 4. The board of supervisors shall, yearly and every year until the said stock shall be wholly redeemed and paid off, order and cause to be raised by tax, on the estate, real and personal, of the freholders and inhabitants of and situated within the said city and county, and to be collected according to law, a sum of money sufficient to pay the interest on the said stock as the same falls due, and to pay and discharge the principal by the time the

same shall be payable. All of which moneys, so to be raised, shall be under the management and control of the commissioners of the sinking fund of the city of New York; and all such moneys, so to be raised, are hereby inviolably pledged to pay the interest and redeem the principal of the said stock.

§ 5. The public school society may, immediately after so conveying all their corporate property, appoint fifteen, from the then trustees of said society, to be commissioners of common schools for the city of New York and members of the board of education, designating the ward for which each person is appointed—and not more than one for any one ward—who shall hold their offices till the first day of January, one thousand eight hundred and fifty-five; and the said public school society may also at the same time appoint, from among their own trustees, three trustees of common schools for each ward of said city in which one or more of the schools of said society are now established, designating the ward for which each person is appointed; and the said trustees so appointed shall be so designated, in the certificate of appointment, that one shall serve until January first, eighteen hundred and fifty-five, one till January first, eighteen hundred and fifty-six, and one until January first, eighteen hundred and fifty-seven. The said appointments shall be made by a certificate signed by the officers of said society, and filed with the clerk of the board of education; and the said commissioners and trustees so appointed shall have the same rights and powers, and be subject to the same liabilities and duties, as other commissioners and trustees of common schools in said city, except that they need not reside in the wards for which they are appointed. Any vacancy occurring in the office of any such commissioner or trustee shall be filled in the same manner as vacancies in school offices are now filled.

§ 6. As soon as the said public school society shall have conveyed all their corporate property, and made and filed the statements, and made and filed the appointments of commissioners and trustees provided for in the previous sections of this act, the corporate powers and the existence of the said public school society shall cease, and their schools be merged in the system of public instruction provided by the act entitled "An act to amend, consolidate and reduce to one act the various acts relative to the common schools of the city of New York," passed July third, eighteen hundred and fifty-one, so as to be and remain, pursuant to the provisions of this act, an integral portion thereof, and then and thereby the said society shall be dissolved; and then, and from thenceforth, the common schools of the city of New York shall be numbered consecutively by the board of education.

[Sections seven to fifteen of this act are solely amendatory of the act of 1851, and the amendments they prescribe are embodied in that act.]

§ 16. This act shall take effect immediately, except that sections three, four, thirteen and fifteen shall not take effect until the said public school society have conveyed their property, and made and furnished a list thereof, and of their debts, and made and filed the certificate of appointment provided for by this act, but shall take effect immediately thereafter.

[*Laws of 1854, chap. 267.*]

§ 2. All the trusts and estates held by or vested in the public school society of the city of New York, as organized and existing previous to its several acts, in compliance with the provisions of the act entitled "An act relative to common schools in the city of New York," passed the fourth day of June, one thousand eight hundred and fifty-three, which have not been conveyed by the society, and all the rights, powers and duties of the said society which yet remain therein, shall continue and be vested in the board of education of the city of New York, which board is and shall be held to be the lawful successors of the said society in the execution of every trust; and the corporate existence of the said society is hereby merged in the said board; and the persons appointed by the said society as commissioners and trustees of common schools, under and by virtue of the said act, shall, during the terms for which they were respectively appointed, have and possess all the rights and powers, and be subject to all the liabilities and duties, of the offices to which they were so appointed, as fully and completely as they would or could if the said society had fully complied with all the provisions of the said act.

§ 3. The commissioners referred to in the seventeenth section of the act entitled "An act further to amend the charter of the city of New York," passed the twelfth day of April, one thousand eight hundred and fifty-three, shall approve of and report to the board of supervisors all appropriations submitted to the said commissioners by the board of education, within twenty days after such submission is made, by the delivery of a statement of the appropriations required by the board of education to the comptroller, who shall immediately convene the said commissioners to consider the same; or else the said commissioners shall, within the said twenty days, return and file the same, with their objections, in the office of the clerk of the board of education; and the provisions of the said act shall cease to operate upon or affect, from and after the expiration of the said twenty days, any appropriation in respect to which the said commissioners shall have omitted to take such action; or any appropriation to which the board of education, upon a reconsideration pursuant to said act, shall have adhered by the requisite vote of two-thirds, which the said commissioners shall omit to report within ten days after the return thereof to them, to the board of supervisors. And the provisions of the said act shall apply to such only of the appropriations required by the board of education as are required by law to be acted upon by the board of supervisors.

[*Chap. 351, Laws of 1864, p. 822.*]

[The first ten sections of this act are substituted for the first section of chapter 356, Laws of 1851, which is repealed by section eleven.]

**SECTION 1.** The city of New York is hereby divided into seven school districts, as follows: First district, first, second, third, fourth, fifth, sixth and eighth wards; second district, seventh, tenth, thirteenth and fourteenth wards; third district, ninth and sixteenth wards; fourth district, eleventh and seventeenth wards; fifth district, fifteenth and eighteenth wards; sixth district, twentieth and twenty-first wards; seventh district, twelfth, nineteenth and twenty-second wards.

§ 2. At every charter election in the said city, there shall be elected in each school district one commissioner of common schools, who shall take office on the first day of January next after his election, and hold office for the term of three years; and there shall also be elected in each ward one trustee of common schools, who shall take office on the first day of January next after his election, and hold office for the term of five years; and no school officer shall hereafter be elected or appointed in the said city except as provided by this act, and no person shall at the same time hold more than one school office.

§ 3. On the second Wednesday of January, one thousand eight hundred and sixty-six, the mayor of the city shall nominate to the board of education one person for each school district, as a commissioner of common schools, and the said board shall appoint or reject each of the persons so nominated. If any of them shall be rejected, the mayor shall make a new nomination, and shall continue to nominate until seven shall be appointed by the board. The persons so appointed shall hold office until the first day of January one thousand eight hundred and sixty-seven.

§ 4. On the third Wednesday in November in every year, the mayor of the city shall nominate to the board of education one person for each school district, as an inspector of common schools in the district, for the term of three years, from and after the first day of January then next. The board of education shall, on the first Wednesday in December, vote by yeas and nays upon the appointment of each of the persons nominated; and every person who shall receive the affirmative votes of a majority of the whole board, shall be appointed. If any of the persons so nominated shall fail to receive the votes of a majority of the whole board, the mayor shall make a new nomination, and shall continue to nominate, until an appointment shall be made for each district, in the manner and for the term prescribed in this section.

§ 5. If, on the second Wednesday in January next, there shall be in any school district more than two inspectors of common schools in office by popular election, the board of education shall select two of them, and such of the said inspectors as are not selected shall immediately cease to hold office. After such reduction in the number of inspectors has been made, the board of education shall select by lot one of the two inspectors in each district, in office by popular election, and the inspector selected shall be an inspector for the district, and shall hold office until the expiration of the term for which he was elected, and the inspector not selected shall cease to hold office unless the board of education shall appoint him an inspector for the district, in which case he shall hold office until the thirty-first day of December, one thousand eight hundred and sixty-six.

§ 6. Vacancies in school offices shall be filled as follows: If there shall be less than three commissioners or three inspectors in any district, every vacancy shall be filled in the case of a commissioner until the same can be filled at a charter election, and in the case of an inspector for the unexpired portion of the term in which the vacancy exists, in the manner provided by this act for the appointment of inspectors; and if there shall be less than five trustees in any ward, every vacancy shall be filled by the mayor and a majority of the inspectors of the district in which the ward is included, until the same can be filled at a charter election. Every vacancy in the office of a commissioner or trustee, occurring more than ten days previous to any charter election, shall be filled at the next charter election for the unexpired portion of the term in which the vacancy exists.

§ 7. The elections held by virtue of this act shall be subject to the same laws and regulations in all respects, so far as the same may be applicable, as those which govern the charter elections in said city; but the ballots for school officers shall be indorsed "school officers number . . ." and deposited in a separate box. Every person voted for to fill a vacancy in a school office shall be designated in the ballot by the words, "to fill a vacancy," written or printed immediately over his name, or if there be more than one vacancy to be filled, the persons to be voted for shall respectively be designated by the words "to fill vacancy of years."

§ 8. Every school officer shall at the time of his election or appointment be a resident of the district or ward for which he is elected or appointed, and every trustee removing from the ward for which he is elected, or appointed, and every school officer removing from the city, shall thereby vacate his office.

§ 9. The board of education shall be judges of the election and qualification of its members.

§ 10. Every person elected or appointed to a school office in said city shall, before entering on the duties of his office, and within fifteen days after the commencement of the term for which he is elected, or from the time of being notified of his appointment to fill a vacancy, take and subscribe before the clerk of the board of education, the oath of office prescribed by the Constitution of this State; and the school office to which any person, who shall omit to take the said oath, within the time and in the manner above prescribed, may have been elected or appointed, shall be vacant, at and from the expiration of the said fifteen days.

§ 11. The first section of an act entitled "an act to amend, consolidate, and reduce to one act the various acts relative to the common schools in the city of New York," passed July 3, 1851, and so much of all other acts heretofore passed as is amendatory of the said section, are hereby repealed; but this section shall not affect the continuance in office of the present school officers, nor their powers or duties.

§ 12. The schools in the several wards shall be classified as grammar, primary and evening schools, and teachers for the said schools shall be appointed as follows: Principals and vice-principals by the board of education, upon the written nomination of a majority of the trustees of the ward, stating that the nomination was agreed to at a meeting of the board of trustees, at which a majority of the whole number in office were present. Other teachers, and also janitors, shall be appointed by a majority of the trustees for the ward, or a majority of the inspectors for the district. The board of trustees for the ward, by the vote of a majority of the whole number of trustees in office, may also remove teachers employed therein, other than principals and vice-principals, and may also remove janitors, provided the removal is approved in writing by a majority of the inspectors for the district; and provided further, that any teacher so removed shall have a right to appeal to the board of education, under such rules as it may prescribe, and the said board shall have power, after hearing the answer of the trustees, to reinstate the teacher.

§ 20. The commissioners, inspectors and trustees elected or appointed in pursuance of the provisions of this act, shall respectively possess and exercise the powers and duties which the commissioners, inspectors and trustees of common schools now lawfully possess and exercise, except as herein otherwise provided.

[Chap. 264, *Laws of 1866*, p. 560.]

#### THE FREE ACADEMY ERECTED INTO A COLLEGE.

SECTION 1. The free academy in the city of New York, heretofore established under the authority of law by the board of education of the city and county of New York, and now under the supervision, management and government of the said board of education, shall henceforth be a separate and distinct organization and body corporate, and be known as "the college of the city of New York," and as such shall have the powers and privileges of a college, pursuant to the Revised Statutes of this State, and be subject to the provisions of the said statutes relative to colleges, and to the visitation of the Regents of the University, in like manner with the other colleges of the State.

§ 2. The members of the said board of education shall be ex-officio the trustees of the said college, and shall have and possess the powers and be subject to the duties required of the trustees of colleges by the Revised Statutes.

§ 3. All acts of the legislature now in force in regard to the said free academy, and to its control, management, support and affairs, and which are not inconsistent with the foregoing provisions of this act, shall continue in force, and are hereby declared to be applicable to the college hereby incorporated as aforesaid.

[Chap. 637, *Laws of 1866*, p. 1374, vol. 2.]

#### PROVISION FOR SUPPORT OF COLLEGE OF THE CITY OF NEW YORK.

SECTION 1. The trustees of the college of the city of New York shall annually, on or before the fifteenth day of November, report to the board of supervisors of the county of New York, such sum, not exceeding one hundred and twenty-five thousand dollars in any one year, as they may require for the payment of the salaries of the professors and officers of the said college, for obtaining and furnishing scientific apparatus, books for the library and students, and all other supplies therefor, for repairing and altering the college buildings and for the support, maintenance and general expenses of said college; and the said board of supervisors of the county of New York are hereby authorized and directed in each and every year, to raise and collect by tax on the estate, real and personal, liable to taxation in such county, such sum of money, not exceeding the amount aforesaid, as may be reported to them by said trustees; the amount so to be raised and collected to be in addition to the sums required for the purposes of common schools in the city of New York, under the act entitled "An act to amend, consolidate and reduce to one act the various acts of the city of New York relative to common schools," passed July third, eighteen hundred and fifty-one, and the various acts amendatory thereof. And the said board of supervisors are required and directed to raise and collect, in the manner aforesaid, for the trustees of said college, in the year one thousand eight hundred and sixty-six, the sum of one hundred and twenty-five thousand dollars for the uses and purposes aforesaid.

§ 2. It shall be the duty of the trustees hereinbefore named, to select a suitable site upon the lands of the corporation of the city of New York, north of Fortieth street in said city, for the future use of the college of the city of New York, and notify the commissioner of the sinking fund of such selection, and such site shall not be sold, leased or otherwise incumbered unless such disposition thereof is expressly authorized by some law hereafter passed.

#### OGDENSBURGH.

[Chap. 382, *Laws of 1857*, p. 96, vol. 1.]

SECTION 1. All that territory comprised within the corporation limits of the village of Ogdensburgh, lying in the town of Oswegatchie, and those parts of school districts numbers one and twenty-one, of the town of Oswegatchie, lying without the said corporation limits, are hereby consolidated and organized into one school district, subject to the control of a board of education as hereinafter provided.

§ 2. The district hereby organized shall participate in the distribution of the school moneys and library money, in the same manner as other school districts. Whenever the board of education shall be organized under this act, the amount to which the district shall be entitled from the moneys distributed by the State, shall be paid over to the treasurer of the village of Ogdensburgh, subject to the orders of the said board of education. The amount to which said district shall be entitled for the year eighteen hundred and fifty-seven shall be determined by the school commissioners of the county of St. Lawrence, and the supervisor of the town of Oswegatchie shall pay the amount so determined to the treasurer of said village, upon the order of said school commissioners.

§ 3. The supervisor and town clerk, together with three of the justices of the peace of the town of Oswegatchie, shall, on or before the first day of May, eighteen hundred and fifty-seven, meet and divide the moneys derived from the sale of the school lot in said town, between the school district hereby organized, and the remainder of said towns in proportion to the number of persons between four and twenty-one years of age, residing in the said village district and the said remainder; they shall also at the same time estimate and determine the value of the interest of the town of Oswegatchie, exclusive of the interest of the village of Ogdensburgh in the academy building and grounds; they shall deduct the value of the interest of said town in such academy buildings and grounds from the share of the moneys derived from the sale of the school lot which would fall to the said district by this act organized; and shall make and subscribe a record of such division, estimate and deduction, and the result thereof; one copy of which shall be filed with the town clerk, and another with the village clerk. Such acts, when completed, shall divest said town, except the village of Ogdensburgh, of all interest in Ogdensburgh academy buildings and grounds. That portion of the said moneys arising from the sale of the school lot remaining to this district shall be subject to the control of the board of education, within the provisions of this act.

§ 4. On the second Wednesday of May, eighteen hundred and fifty-seven, the electors of said village, in the same manner as the charter elections are held, shall meet and choose nine of their number as school commissioners, who, when organized as hereinafter provided, shall constitute the said board of education. Within eight days after notice of their election, they shall take the oath of office prescribed by the Constitution and file the same with the village clerk; within ten days after their election, the persons so chosen and qualified shall meet and by lot arrange themselves into three equal classes, and class number one shall continue in office for one year, class number two for two years, and class number three for three years; provided, however, that no term of office shall expire until a successor is chosen and qualified; and on the same day in each year thereafter three persons shall be chosen as school commissioners for the term of three years. Any person so elected or appointed to such office for neglect or refusal to serve without cause shall forfeit twenty dollars, to be sued for, collected and applied as other penalties provided for in this act.

§ 5. One of said commissioners shall be selected by a majority of their number as president of the said board of education, which office shall continue for one year; the president shall preside, when present, at all meetings of the board.

§ 6. The village clerk shall be ex-officio clerk of the board of education; he shall attend its meetings, make, engross and keep in a book provided for that purpose a record of all the doings, votes and reports of said board.

§ 7. The board of education may elect any person not a member of their own body superintendent of schools, who, in addition to such other duties as may be devolved upon him by said board, shall visit and supervise the schools in said village, examine into and determine the qualifications of all teachers and grant certificates to such as are qualified as are now granted by school commissioners, but which shall be valid for only one year, and may be revoked for cause by himself or by resolution of said board; he shall make out all annual and other reports touching the condition of the schools and all matters connected therewith. The term of office of such village superintendent shall be three years; his salary shall be fixed by the board of education, and be a charge upon said village of Ogdensburgh.

§ 8. In case of a vacancy in the said board of education, by refusal to serve or otherwise, the said board may supply the same by appointment until the next annual election, when a commissioner shall be chosen for the remainder of the unexpired term.

§ 9. The treasurer of the village of Ogdensburgh shall be ex-officio treasurer of the board of education; he shall receive all school moneys, and keep the same under the respective heads of "teachers' fund," "general fund," "special fund," and "academy fund," to which such moneys shall belong, to the credit of the board of education of the village of Ogdensburgh; he shall pay out the same only on the warrant of said board, in favor of the person entitled to receive it, signed by the president and clerk; he shall report on the first day of each month, to said board, the receipts of all moneys since his previous report, from what source and to which fund, the sums paid out, from which fund and to whose order, and the balance of each fund remaining on hand, with any general information specially required in writing by said board; he shall give bonds for the faithful performance of his duties in this office in a sum not less than double the amount of moneys to come to his hands; the form, amount and sufficiency of the securities to be fixed and approved by said board of education, and he shall renew the same as often and whenever said board by resolution shall require.

§ 10. The board of education shall be a body corporate in relation to their powers and duties under this act; five shall constitute a quorum for the transaction of business, except that when the question involves the appointment of school superintendent, or the removal of such superintendent or any teacher, the raising of money or the expenditure of over one hundred dollars, the assent of a majority of the whole board shall be requisite, and all questions shall be taken by ayes and nays, and the votes made a matter on record;

any member of said board of education, or any officer, superintendent or teacher appointed by it, may be removed for cause, after five days' notice, by resolution of said board.

§ 11. The members of said board of education shall not receive any compensation for their services as such, but shall be repaid all actual disbursements incurred by them as such officers, nor shall they be interested as principal, partner or surety, in any contract connected with the schools or institute under the charge or said board, nor in the making, erecting, furnishing or supplying any thing whatever for the use of or connected therewith. Neither the superintendent nor any teacher in the schools organized under this act, nor any member of the board of village trustees, clerk, treasurer or collector, of said village, shall be eligible to the office of school commissioner.

§ 12. The trustees of the village of Ogdensburgh shall provide for the said board of education a suitable room in which to hold their meetings, together with the proper and necessary furniture, stationery, fuel, lights, and books for record; said board shall meet as often as once in each month for the transaction of business, and special meetings may be called by the president or any three members of the board.

§ 13. The said board of education, when organized as herein provided, shall be and they are hereby invested with full and perfect title to all sites, lands, buildings and all and every other property belonging or pertaining to the school districts within the bounds of the district hereby organized, and of the Ogdensburgh academy, to be kept and used for school purposes, except as hereinafter provided, and said board of education is hereby authorized and empowered to take and hold any and all real and personal estate or other things by grant, gift, devise, bequest, for the use of the schools or institute under its charge, and to use the same or sell and apply the proceeds as shall in its judgment best carry out the instructions of the donors, or subserve the interests of the schools.

§ 14. Within ten days after notice of an organization of the board of education, the trustees of the several districts hereby consolidated shall make, execute and deliver to the said board, a deed in fee simple of all lands, sites, buildings or fixtures owned or possessed by said districts, and shall also deliver to said board all school furniture and any and all school property, belonging to or connected with said school districts, and also all school moneys in hand or uncollected, and all tax and rate bills uncollected, and at the same time report to said board an annual statement of all indebtedness of their respective districts, insurance, teachers employed, their names, compensation and period of contract.

§ 15. The said board of education shall, within thirty days after receiving the reports required by section fourteen, from the trustees of said school districts, ascertain the amount of the indebtedness of each district, after the application of all its available means, and certify the same to the board of village trustees; they shall also, within the same time, determine what improvements and alterations are necessary in the school-houses, and the cost of the same beyond any funds applicable to such purpose, and certify the same to said trustees; and the said board of village trustees shall assess such several sums on all the taxable property in each of the respective districts where the money is to be used, and collect the same along with the first village tax collected thereafter, and place the same to the credit of the board of education with the village treasurer.

§ 16. All the taxable property within the bounds of the district hereby organized shall be liable to taxation under this act; and taxes shall be apportioned upon the property within the corporation according to the valuation in the last village assessment roll, and upon property lying without the village corporation, according to the valuation to be fixed by the village assessors, which they shall each year ascertain and assess as they do other property, and attach at the end of the village roll.

§ 17. On or before the fifteenth day of June next, and on or before the first day of May in each year thereafter, the board of education shall determine and certify to the trustees of the village of Ogdensburgh the amount of money over and above all other funds in hand applicable to that purpose, required for teachers' wages for the year commencing on the first day of April; and said board shall at the same time determine and certify to the said village trustees what sum of money, exclusive of any applicable to such purposes, is necessary and requisite to defray for the year the expenses for fuel, books for indigent scholars, school furniture and apparatus, insurance, leasing additional school rooms, repairs of houses, out-houses, fences and other expenses ordinarily incident to the maintenance of such schools; and the said trustees shall cause to be assessed the several sums of money so certified, on the taxable property and corporations within the district hereby organized, and collect the same along with the first village tax thereafter collected; which sums shall be placed with the village treasurer to the credit of the board of education, the first sum to the "teachers' fund," and the other sum to the "general fund," provided, however, in no case shall the assessment for these two purposes, in any one year, exceed twenty-five cents on the one hundred dollars, on the property valuation of the said assessment rolls liable for said tax; and warrants to collect a greater sum shall be void. Whenever the aforementioned assessments are valid, if for any reason the collector is unable to collect the full amount of his warrant, the trustees shall supply any deficiency to these two funds, provided for by this section, out of any moneys which may come into the village treasury, and shall deposit the same as above provided. *[As amended by chapter 58, Laws of 1866, p. 96, vol. 1.]*

§ 18. The common schools hereafter to be maintained and kept in the district hereby organized, shall be free to all inhabitants of the district over four years of age. The superintendent and village clerk are hereby authorized to administer oaths and take affidavits in all matters pertaining to the schools and institute provided for by this act, which shall have the same validity as if performed by a justice of the peace, but shall not be entitled to any fee or remuneration therefor.

§ 19. The trustees of the Ogdensburgh academy shall, at the time specified in section fourteen, make, execute and deliver to the board of education, a deed in fee simple of the



Ogdensburgh academy and grounds, and also deliver over to said board all property of whatever kind or nature pertaining to said academy, with a report of all indebtedness, the names and compensation of its teachers and the time for which employed.

§ 20. The board of education shall, at the same time they make their certificates, as provided by section fifteen, determine what alterations or repairs to fit the academy building for the purposes of an institute, and furnish it, over and above all means at their disposal for such purpose; and if they shall elect to fit up and furnish it, they shall certify the sum so required, to the board of trustees, who shall assess the same upon the taxable property within the district hereby organized, and cause the same to be collected along with the next village tax, and paid over, as other sums, to the academy fund.

§ 21. As soon as practicable, after the necessary buildings are prepared, the board of education shall organize an institution to be designated the "Ogdensburgh educational institute," which said institute shall be entitled to participate in the distribution of the income of the literature and other funds, as do the other academies of the State; and the Regents of the University shall pay annually to the board of education of said institute a distributive share of such funds; said institute shall be subject to the restriction and control of said Regents, in like manner as other incorporated academies. The said institute is hereby invested with all the rights of the Ogdensburgh academy, to any revenues derived from ferry licenses or other sources.

§ 22. Whenever the board of education shall deem the erection of additional school-houses necessary for the common schools, or new and additional edifices for the educational institute, they shall determine the kind of house or edifice, the sum required to erect the same, purchase the site and furnish the appurtenances, specifying the cost of each separately, and certify the same to the board of trustees; the board of trustees shall cause the application and specifications to be advertised for four weeks, in two of the newspapers published in said village, immediately preceding the next annual election for school commissioners; at such election the village trustee shall provide a box for ballots, labeled "schools," and also ballots which shall be headed "schools," on which shall be written or printed, "for the school tax," and others so headed on which shall be written or printed, "against the school tax;" if more than one proposition is submitted at the same time, separate boxes shall be prepared, each so labeled as to designate its proper object, thus: "schools," "appropriation for institute," "schools," "appropriation for school-houses"; and the ballots shall be so headed, and shall be in other respects as herein previously provided; and the inhabitants of said district, hereby organized, entitled, under the present charter of the village of Ogdensburgh, to vote for village special tax, shall decide by ballot for or against such appropriation; if a majority of such voters declare for any such appropriation, the trustees shall assess the same upon all the taxable property in said district, hereby organized, and direct its collection with the next village tax; and when collected to be paid over to the credit of the "special fund"; provided, however, the board of village trustees may have the discretionary powers now devolved on school districts, to apportion said tax for two or more years, up to four; and when so apportioned the board of education shall be authorized to borrow money on the credit of said tax.

§ 23. All moneys raised, received or in anywise belonging to the institute, or to the schools or district hereby organized, shall be under the control of the board of education; but no moneys raised for a specific or particular purpose shall be applied to or used for any other purpose. Said board of education is hereby prohibited from contracting debts for any purpose whatever; and the lands, sites, buildings and personal property belonging to said institute or schools, or used or kept for school purposes, shall be forever exempt from taxation, and from levy and sale on execution.

§ 24. The libraries of the several school districts hereby consolidated shall be subject to the control and direction of the said board of education; they shall provide for their safe keeping; may keep separate or consolidate them into one or more school libraries, dispose of any duplicates or unsuitable volumes, and apply the proceeds, together with the library money arising from the common school fund, to the purchase of new books.

§ 25. The board of education may prescribe the form requisite to admission in the educational institute, the studies to be pursued there, and the text books to be used; may fix the rate of charge for tuition, which to the children of actual residents shall not be less than two dollars and fifty cents per term of not exceeding fifteen weeks, for all English branches, and four dollars for the other branches, except music; they may demand tuition bills in advance, and may exempt indigent persons in whole or a part, and may also divide the institute into male and female departments. The said institute, when so organized, shall be subject to the same right of visitation and control from the Board of Regents as are other academies of the State.

§ 26. The board of education shall have full power, and it shall be their duty:

1. To organize as many common schools in the village as shall be necessary for the accommodation of those who attend, and change, consolidate and discontinue the same;

2. To lease school rooms and furnish the same, to sell or exchange the present academy buildings and grounds, upon a vote of a majority of all the members of said board; and, when authorized, as herein provided, to purchase sites and erect school-houses and institutes;

3. To provide books and stationery for indigent scholars, and all necessary instruments and apparatus for the institute and schools;

4. To prescribe the course therein in the schools, the text books to be used therein, and to do such other acts as will best promote the efficiency and utility of the same;

5. To make rules and regulations for the protection of the buildings, furniture and grounds pertaining to the said institute and schools;

6. To employ teachers and pay the same ; to make rules and regulations for the reception of pupils, or their exclusion from schools, or their transfer from one school to another—not inconsistent with the general law—securing the freedom of schools to all pupils residing in the district, and to amend or repeal the same or to make others ;

7. To sue for and collect, in their corporate name, all penalties prescribed or authorized by this act, and for all destruction of or injury to any school property ;

8. To effect insurance on any or all school property ;

9. To make the reports required by law to the school commissioners and Board of Regents ;

10. To employ a suitable and competent person to take the census of persons within said district, over four and under twenty-one years of age, and pay him therefor ;

11. To cause to be prepared and presented to the board of trustees, between the first and fifteenth days of April in each year, a full report of all the acts of said board, wherein shall be set forth the number, kind and grade of schools kept ; the number of scholars, time each has attended, and studies pursued ; the number of teachers employed, and compensation to each ; the money received, from what sources derived, the amount disbursed, and how expended, and what sums remaining on hand in each fund ; and any other matters connected with the cost and operation of the schools and institute which they may deem proper ; and the board of trustees shall cause the same to be published two weeks previous to the annual election, in one of the newspapers published in said village.

§ 27. The board of trustees shall cause this act to be published, together with such rules, regulations, and by-laws as shall be adopted by the board of education ; and any copy of the same or either, duly certified by the clerk of said board under his hand and seal, shall be received as evidence in all courts of justice, with the same force and effect as the originals if produced and duly proved.

§ 28. The acts and decisions of the board of education, and of the superintendent of schools by them appointed, shall be subject to appeal in the same manner as appeals are taken from the acts of school trustees and school commissioners and from the trustees of the Ogdensburgh academy.

§ 29. On the organization of the board of education, the office of "trustee of the Ogdensburgh academy" and "trustee of school district" in the districts hereby consolidated and all other officers in said district shall terminate, except so far as to authorize them to perform the duties imposed by sections fourteen and nineteen of this act.

§ 30. All acts and parts of acts inconsistent with this act are hereby declared inoperative to the territory comprised within the district hereby organized.

§ 31. The legislature may at any time, alter, amend, or repeal this act.

[Chapter 166, Laws of 1865, authorized the raising of twenty cents on the dollar of valuation for the year beginning May 1, 1865.]

## ONONDAGA.

[Chap. 839, Laws of 1866, p. 1897, vol. 2.]

SECTION 1. All that territory embraced in school districts numbers seven and twenty-eight, in the town of Onondaga, county of Onondaga, is hereby consolidated and shall hereafter constitute one school district, and shall not be subject to alteration except by the legislature, or as hereinafter provided, to be known henceforth by the name of "Onondaga free school district."

§ 2. George B. Clark, M. Roland Markham, James Longstreet, Ralph Chaffee, Thomas T. Clark, Richard R. Slocum, Nathaniel Bostwick, Cornell Cryslar and Truman K. Fuller, are hereby appointed trustees of said district, to be divided by lot, at their first meeting, into three classes, to be numbered one, two and three, and to hold their offices as follows : Class number one until the first annual meeting, which shall be held on the second Tuesday in October, eighteen hundred and sixty-seven ; class number two until the next annual meeting thereafter ; and at each annual meeting there shall be elected three trustees to supply the places of those whose terms of office shall expire ; and each of those elected at the annual meetings shall hold his office for three years, unless elected to fill a vacancy. If at any annual meeting there should be a failure to elect, those whose terms of office would expire shall hold their offices until others are elected in their stead. Notice of the annual or special meetings shall be given by posting the same in five public places in the said district, and publishing the same in a newspaper, if one shall be at the time printed in said district.

§ 3. The trustees of said district and their successors in office shall constitute a "board of education" for said school district, and for the purposes of this act, in addition to the duties of trustees, are hereby constituted a corporation by the name of "the board of education of the Onondaga free school district ;" and the said board of education shall have power to establish and organize a classical school in said district, to be known by the name of the "Onondaga seminary ;" and such classical school shall be entitled to share in the distribution of the literature fund upon the same terms as incorporated academies of this State ; and the Regents of the University shall recognize said seminary as such as soon as the required sum of money shall be expended in buildings and apparatus, and competent teachers are employed therein.

§ 4. The board of education shall appoint one of their number president of the said board, who shall preside at the meetings of the said board when present, and when absent they shall appoint a president to perform the duties of president pro tempore ; they shall also appoint one of their number secretary, who shall record all the acts, doings and resolutions of said board, and in his absence a secretary pro tempore to discharge such duties ; they shall

also appoint a collector, librarian and treasurer, who shall hold their respective offices, unless sooner removed, for one year from their appointment, and until others are appointed in their places, unless sooner removed by said board. Such collector, librarian and treasurer shall each, within ten days after notice in writing of their respective appointments, and before entering upon the duties of their respective offices, execute and deliver to said board of education, a bond in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of their respective duties; and, unless such bond shall be executed and delivered within ten days after such notice, such office shall become vacant, and said board may fill such vacancy.

§ 5. The said board of education shall have power:

1. To pass such by-laws as they may deem proper for the regulation and exercise of their lawful business and powers, subject, however, to the approval of the Superintendent of Public Instruction;

2. To fill any vacancy which may happen by reason of death, removal or refusal to serve of any member or officer of said board, or of the district; and the person so appointed to fill such vacancy shall hold his office until the next election of trustees, as by this act provided;

3. To remove any member of their board, or any officer of their appointment, for official misconduct; but a written copy of all charges for such misconduct shall be served upon him at least ten days before the time appointed for a hearing, and he shall be allowed a full and fair opportunity to refute such charges before removal;

4. To take charge and possession of the school-houses, sites and lots, furniture, books, apparatus and all the school property within their district formerly owned by said consolidated districts, or either of them, or which may be acquired by said board under subsequent provisions of this act; and the title of the same shall be vested in said board of education, and the same shall not be subject to taxation for any purpose whatever;

5. To take and hold for the use of said schools, or any department of the same, any real estate transferred to it by gift, grant, bequest or devise, or any gift, legacy or annuity of whatever kind, given or bequeathed to the said board, and apply the same, or the interest or proceeds thereof, according to the instructions of the donor or testator;

6. To receive into the said schools any pupils residing out of said district, and to regulate and establish the tuition fees of such non-resident pupils in the several departments of said schools and also those of scholars residing in the said district and attending the seminary, to regulate the transfer from the primary to the academical department, and from class to class of all scholars, as their degree of scholarship may warrant; to direct what text books shall be used therein; to provide fuel, furniture, apparatus and other necessities for the use of said schools, and sue for and collect all debts and demands due to said district, in the corporate name of said board of education; and all contracts made by the members of the said board in their official capacity shall be binding on them and their successors in office;

7. To contract with and employ all teachers in the several departments of the school, and for cause to remove them; to pay the wages of such teachers out of the moneys appropriated for that purpose;

8. To possess all the power, privileges and immunities, and to be subject to all the duties in respect of the common schools, which the trustees of the common schools now possess and are now subject to, not inconsistent with this act, and to enjoy all the immunities and privileges now enjoyed by the academies of this State;

9. The board of education are hereby authorized to convey the titles of the old sites and school-houses, vested in them by subdivision five of this section, to the purchasers thereof, and also authorized and empowered to obtain by purchase, or by gift, grant or adoption, the grounds, buildings, apparatus, cabinet and all other school furniture and fixtures thereunto belonging, now known as the "Onondaga academy," and located within their district, provided that said academy, ground, buildings, library, apparatus and other school property connected therewith, can upon negotiation with the board of trustees of said academy be procured for a sum not exceeding twenty-five hundred dollars, or the present indebtedness of said academy; and in case said academy, grounds, buildings, library, apparatus, and other property can be procured on the terms aforesaid, said board of education shall succeed to all the rights, titles, privileges, immunities and benefits, of every name and nature whatever, which now vest in or belong to said board of trustees as such, the same as if said academy had been adopted as the academical department of the free school of said district, under the general free school law of the State; and said board of education shall succeed to the charge and administration of all funds or endowments of said academy, which now exist, and are in the possession or subject to the supervision of the said board of trustees of said academy in their corporate or official capacity, and shall apply the income or other part thereof exclusively to the support of said academy or the academical department of the free school of said district, strictly in accordance with the will or devise of the donors of said funds or endowment, the same as it is now applied by said board of trustees; and in reference to said funds or endowments of said academy, the said board of education shall succeed to and be clothed with all the powers and duties in relation thereto, and in the application thereof, which are now possessed by and devolved upon said board of trustees, by the terms or conditions of such bequests or endowments, as expressed in the gift or bestowal of the same; and said board of trustees, by a majority vote of their number, are hereby empowered and enabled to transfer said academy, grounds, buildings, library, apparatus, and other property or endowments, together with all their rights and titles thereto, to said board of education, and to vacate their offices in the same manner as if said academy had been adopted by the said board of education, under the provision of section twenty-four, title nine, chapter five hundred and fifty-five of the Session Laws of eighteen hundred and sixty-four.

§ 6. It shall be the duty of said board to have reference, in all their expenditures and contracts, to the amount of moneys which shall be appropriated or subject to their order or draft during the current year, and not exceed that amount; and the said board shall apply all the public moneys appropriated to the district, to the departments below the academical, and all moneys from the literature fund or otherwise appropriated for the academical department to the academy or seminary.

§ 7. The board of education shall cause to be levied and collected upon the taxable property of said district, in the manner provided by law for the assessment and collection of school district taxes, a sum, which, together with the amount received from the apportionments made by the Superintendent of Public Instruction and the school commissioners, shall be sufficient to pay all teachers' and instructors' salaries and wages, who are employed in said school. The fuel and other necessary contingent expenses of the school shall be raised by tax on the taxable property of said district, as is now provided for; and all warrants for the collection of taxes in the said districts shall be issued under the hand and seal of the president and secretary or a majority of said board. The moneys received from the literature fund shall be applied to the support of the academical department; and the tuition fees of non-resident scholars in the primary departments may be applied in such manner as the board of education shall direct, either to the support of the primary or academical departments of said school.

§ 8. All moneys raised in the said district for the purposes of the schools, and all the public school moneys received by such district from any source, shall be paid to the treasurer of the district, which shall be applied to the support of said school, according to the provisions of this act.

§ 9. The taxable inhabitants of said district, at any annual, special or adjourned meeting legally held, may vote to raise a sum of money which they may deem expedient, not exceeding six thousand dollars, for the purpose of procuring suitable grounds and buildings for said schools in said district, and furnishing the same with necessary furniture, maps, globes, and other suitable apparatus, and direct the trustees to cause the same to be levied and collected by tax upon the real and personal estate in said district, which shall be liable to taxation for the ordinary taxes of town and county charges, and by such installments as the legal voters may direct, and make out a tax for the same and interest thereon, as often as such installments shall become due.

§ 10. The inhabitants of said district shall have no power to rescind the vote to raise such sum of money at any subsequent meeting, unless the same be done within ten days thereafter; nor shall they have power to reduce the same after the expiration of ten days from the time that such sum was first voted to be raised; but they may remit such sum as may remain unappropriated after paying for suitable grounds and buildings, and furnishing and improving the same.

§ 11. The said board of education are hereby authorized to obtain by loan, the whole or any part of the money legally voted by the said district, and secure the payment of the same with interest, by their official bond.

§ 12. In making out a tax list for the collection of taxes in said district, the valuation of taxable property shall be ascertained, so far as possible, from the last corrected assessment roll of the town of Onondaga.

§ 13. The said board of education are hereby authorized and empowered to sell at public auction to the highest bidder, the school-houses and sites belonging to said districts, by giving public notice, to be posted in five public places in said district, ten days previous to such sale; and the proceeds of such sale shall be used toward procuring suitable grounds and buildings for the schools of said district or to such other purposes for the benefit of said schools as the district may direct; provided that the proceeds of the sale of the school-house and lot in the old district number twenty-eight, shall go so far in liquidation of any tax for school purposes, to be levied on the property of said old district, in case it should be found that the old district number seven has no title to its site and school-house longer than the same are used for school purposes.

§ 14. The school commissioner of the school commissioner district in which the said district is located may, with the consent of the Superintendent of Public Instruction, alter said district by setting off any portion or part thereof to any adjoining district or by forming such portion or part into a new district, providing that two-thirds of the taxable inhabitants, included in such portion or part, shall have petitioned to be set off.

§ 15. This act shall take effect immediately for the purpose of enabling said board of education to take from said board of trustees the conveyance, transfer and assignment provided for in this act, but for no other purposes whatever; but when such conveyance, transfer and assignment shall be made, then this act shall immediately go into full effect.

#### ORANGETOWN.

[*Chap. 303, Laws of 1859, p. 684, as amended by chap. 227, Laws of 1866, vol. 1, p. 515.*]

SECTION 1. The union free school district number four, in the town of Orangetown, county of Rockland, shall form a district, and shall not be subject to alteration, except in the manner prescribed by law.

§ 2. The said district shall be under the direction of a board, to be styled the "board of education," which board shall consist of five members, and be a body corporate, a majority of whom shall constitute a quorum for the transaction of business.

§ 3. The proceedings of the meetings held in January, eighteen hundred and fifty-eight, and in December, eighteen hundred and fifty-eight, in the election of the board of education, are hereby confirmed, and the persons then elected shall continue to hold office for the time for which they were respectively elected.

§ 4. There shall be elected at each annual meeting in said district, to be held on the second Tuesday of October in each year, two persons except every third year, when only one shall be elected), who shall be residents and inhabitants liable to pay taxes for school purposes in said district, to act as members of said board of education, and who shall hold their offices for the term of three years. The said election, and all other elections provided for by this act, shall be held by three inspectors, who shall be appointed by the board of education, at least thirty days preceding such election, which election shall be by ballot, and conducted in the same manner as general elections. [*As amended by § 1, chapter 227, Laws of 1866, vol. 2, p. 515.*]

§ 5. Said board shall have power to fill vacancies occurring in their own body, but the person so appointed shall hold his office until the next annual meeting of said district, when the vacancy shall be filled by election.

§ 6. The said board may make all necessary by-laws for their own government; they shall have the entire control and management of all the common schools within said district, and all the property belonging to the same. They shall, at their first meeting, and at their first meeting after the annual election in each year, appoint one of their number president of said board, who shall preside at the meetings of said board, when present; when absent, a president pro tempore shall act in his stead; they shall also appoint at said meeting one of their number secretary, who shall record all the acts and resolutions of the board, also act as clerk of school district; in his absence a secretary pro tempore shall be appointed to discharge said duties; they shall appoint two of its members, to be styled the committee of education, whose duty it shall be to visit the schools in the district once in each month, to examine and license teachers, and such other duties as are specified in the by-laws of the board; they shall also appoint a treasurer, collector and librarian of said district, who shall hold their offices respectively, one year from their appointment, and until others are appointed in their places, unless sooner removed by said board. Such treasurer and collector shall each, within ten days after notice in writing has been received of his appointment, and before entering on the duties of his office, execute and deliver to said board of education, a bond in a penalty of twice the amount of the estimated amount of the money coming into his hands, and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and such board of education shall thereupon make an appointment to fill such vacancy. Such treasurer's bond shall be approved by the county clerk, and a copy thereof deposited in said county clerk's office.

§ 7. The said board of education shall meet for the transaction of business, on the first Monday in each month, or on such other day of the week as they shall fix upon for the year, and may adjourn for a shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by the secretary, or any other member of the board, as often as is necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his residence, at least twenty-four hours before the hour of said meeting; and if any of said board refuses or neglects to attend any three successive stated meetings of the board, and if no sufficient cause of his non-attendance be shown, the board may declare his office vacant.

§ 8. No member of the board of education, except the secretary, shall receive any pay or compensation for his services, nor shall it be lawful for any member of said board to become a contractor for building or making any improvement or repairs authorized by this act, or be in any manner, directly or indirectly, interested either as principal, partner or surety, in any such contract. All contracts made in violation of this provision shall be absolutely void, and the person so violating shall forfeit the sum of one hundred dollars, which shall be collected by the board for the use of the district.

§ 9. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same by posting up a written or printed notice thereof in at least six public places in the said district, and by publishing the same in the newspapers published in said district, at least two weeks previous to the time fixed for such meeting; which notice shall state the time and place of such meeting, and the purpose for which the same was called; and no business shall be transacted at any such special meeting except that stated in the notice calling the same. One week's notice of the annual meeting shall be given in said newspapers.

§ 10. The title of the school-houses, sites, lots, furniture, books, and all other school property in said district, shall be vested in said board of education, and the said board, in its corporate capacity, may take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest or devise, for the use of common schools in said district.

§ 11. The public schools in said district shall be free to all children residing therein, but the board of education may permit children of persons not resident within said district to attend said schools on such terms as they may prescribe, and said board shall have power to sue for and recover such prescribed sum. Said board shall require one of their number to visit each school in said district, at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary.

§ 12. Every resignation of officers appointed or elected under this act shall be made to the board of education, and such resignation shall not excuse said officer from the discharge of his duties until accepted by said board.

§ 13. Said board of education shall cause an enumeration of the children between the ages of four and twenty-one years in said district, and make, once in each year, such a report to the school commissioner, at the time and in the manner required by law of trustees of school districts; and any parent, or guardian, or housekeeper, refusing to give his or her own name to the person appointed by the said board to take such enumeration,

and the number of the children between said ages living in his or her family, shall be liable to a penalty of ten dollars, said penalty to be sued for and recovered by said board and appropriated to school purposes.

§ 14. The town supervisor shall, upon the written order of the president and secretary of said board, pay to the treasurer of said board, out of money in his hands belonging to said district, such sums as said order may specify, and all moneys to be received shall be paid to the treasurer of said board, who, together with sureties on his official bond, shall be accountable to said board of education; said treasurer shall not pay out any moneys except by resolution of said board, and upon an order drawn by the president and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 15. Said board of education shall have the entire control of the district library, and may make such regulations in regard to the purchase and distribution of books and management of said library as they shall deem proper.

§ 16. Said board of education shall have the power, and are hereby directed, to levy and collect by tax, once in each year, upon all the taxable property and inhabitants in said district, as the same shall have been last assessed by the town assessors of the town in which said district is situated, such sums as said board shall estimate to be necessary for the following purposes, viz.:

1. To pay any deficiency in teachers' wages, after paying all the public money appropriated for such purpose;

2. To hire sites, school-houses and rooms for the use of said school district when necessary;

3. To alter, repair and improve the school-houses belonging to said district, and their appurtenances;

4. To insure the school-houses and property belonging to said district;

5. To pay all debts and any necessary contingent expenses of said school district and of the board of education;

6. Any such sums as shall be authorized by a majority of the legal voters, at any special meeting of said district, for the purposes specified in section seventeen of this act, and the board shall add to their warrant for collection of taxes such amount as they shall deem proper for fees for collecting, not exceeding five per cent on the amount to be collected; said board shall have power to make all warrants for the collection of taxes to be raised by them, returnable in sixty or ninety days, at their discretion, and to renew the same whenever it shall become necessary; such warrant to be signed by the president and secretary, pursuant to resolution of said board. In case it shall appear that the town assessment roll does not include all the taxable property of said district, the property omitted shall be assessed by the said board in the same mode required by law, and added thereto; and the collector of said school district shall, in the collection of any tax authorized by this act, proceed in the same manner and have all the powers which collectors of town and county taxes now possess.

§ 17. Whenever, in the opinion of said board, it becomes necessary to procure a site and build a school-house, to enlarge those already built, or to raise money for any necessary purpose, not enumerated in this act, they shall submit the plans and the estimated cost of such building, site and necessary appendages, to the inhabitants liable to pay taxes for school purposes of said district, at a special meeting called for that purpose; and if a majority of those present shall vote in favor of the same, the said board may proceed to carry the same into effect; but no site purchased and house built after the passage of this act shall exceed in cost jointly, the sum of ten thousand dollars, nor shall any addition to school-houses in said district exceed that amount; neither shall more than one school-house, or addition to any school-house in said district, be built in any one year, nor shall any addition be made to any school-house in said district the same year in which a new school-house is built; nor shall a greater sum than four hundred dollars be raised in any one year, for purposes not enumerated in this act, by special meetings. [*As amended by section 2, chapter 227, Laws of 1866, vol. 1, p. 515.*]

§ 18. Said board of education shall have the power to establish as many primary schools in said district as they may deem proper, and to have in all respects the superintendence, supervision and management of the public schools in said district; to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils, and their transfer from one school to another, and generally for their good order, prosperity and public utility.

§ 19. Whenever, in the opinion of said board, it may be advisable to sell or exchange any school-house, lots or sites now or hereafter belonging to the district, they shall state such object in the notice of an annual or special meeting, and with the consent of a majority of the inhabitants, liable to pay taxes for school purposes, present at such meeting, may sell or dispose of such school-houses, sites or lots, to the best advantage.

§ 20. Said board of education shall, at each annual meeting, submit a report, in writing, of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge, and the number of scholars attending the same; the studies pursued; the amount of money received from the State and from any other source; the expenditure of the same; and all the particulars, in detail, relating to schools in said district; which report may, if the board think best, be printed.

§ 21. All laws and parts of laws inconsistent with this act are hereby repealed, so far as relates to school district number four, in the town of Orangetown, Rockland county.

## OSWEGO.

[Chap. 463, Laws of 1860, p. 794.]

An act to revise the charter of the city of Oswego.

## TITLE VII.—OF THE BOARD OF EDUCATION.

SECTION 1. The commissioners of common schools shall constitute the board of education of said city. The commissioners of common schools now in office shall hold office until the expiration of their respective terms.

§ 2. There shall be elected annually in said city, at a special election to be held on the first Tuesday of May, in the same manner and under the same regulations as other ward officers are elected, one commissioner of common schools for each ward, to supply the places of those whose terms are about to expire; and they shall hold their offices for two years succeeding the next Tuesday of May after their election, and until their successors have been appointed or elected and qualified. They shall take the oath of office prescribed by the Constitution of this State, and file the same with the city clerk.

§ 3. The common council of said city may make appointments of commissioners of common schools to fill the vacancies which may occur from any other cause than the expiration of the term of office of those elected. The commissioners so appointed shall hold their office until the Tuesday next succeeding the next annual election; and at each annual election there shall be chosen a commissioner to supply the place of any person so appointed, and the person thus elected shall serve out the unexpired term.

§ 4. Any commissioner of common schools in said city may be removed from office for official misconduct by the common council of said city, by a vote of two-thirds of the members thereof; but a written copy of the charges preferred against said commissioners shall be served upon him, and he shall be allowed an opportunity of refuting any such charges of misconduct before removal.

§ 5. The board of education shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of this act, to be styled the "board of education of the city of Oswego." A majority of the board shall constitute a quorum. At each annual meeting of the board, on the second Wednesday of May, they shall elect one of their number president of the board, and whenever he shall be absent, a president pro tempore may be appointed. The members of the board shall receive no compensation, nor shall they be interested, directly or indirectly, in any contract for building or for making any improvement or repairs provided for by this act. They shall also have the care of the gospel and school lands, and the securities taken therefor belonging to said city, and shall have full power to sell the same and apply the proceeds in such manner as they shall deem most for the interests of the school districts in said city now entitled thereto.

§ 6. The annual meeting of said board shall be held on the second Wednesday of May in each year. The board shall also meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by any member of the board, as often as necessary, by giving personal notice to each member of the board, or by causing a written or printed notice to be left at his last place of residence, at least twenty-four hours before the hour for such special meeting.

§ 7. The said board shall appoint a secretary and librarian, who shall hold his office during the pleasure of the board, and whose compensation shall be fixed by the board; the said secretary shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe. The said record or transcript thereof certified by the secretary, shall be received in all courts as *prima facie* evidence of the facts therein set forth; and such record, in all the books, accounts, vouchers and papers of said board, shall at all times be subject to the inspection of the common council or any committee thereof.

§ 8. The books of the common school library of the city, now deposited and kept in the building of the Oswego city library, in said city, may remain therein, at the pleasure of said board, and subject to their control. The board may designate the librarian of the said Oswego city library to have the custody and care of the said common school library, and may limit and prescribe his powers and duties in respect thereto, and provide for his compensation.

§ 9. The common council of said city shall have power and it shall be their duty to raise from time to time by tax, such sums as may be determined and certified by the said board of education to be necessary and proper for any or all of the following purposes:

1. To purchase, lease or improve sites for school-houses;
2. To build, purchase, lease, enlarge, alter, improve and repair school-houses, and their out-houses and appurtenances;
3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages; but the power herein granted shall not be deemed to authorize the furnishing with class or text books any scholar whose parents or guardian shall be able to furnish the same;
4. To procure fuel and defray the contingent expenses of the common schools, and the expenses of the school library of said city, and the necessary contingent expenses of said board, including the salary of the secretary of the board;
5. To pay teachers' wages, after the application of public moneys which may by law be appropriated and provided for that purpose; provided, nevertheless, that the tax to be levied as aforesaid, and collected by virtue of this act, shall be collected in the same manner as other city taxes;

6. The amount raised for teachers' wages and contingent expenses shall not be less than twice nor more than six times the amount appropriated to said city from the common school fund of the State during the previous year; nor shall the amount necessary to be raised in any one year for buying sites, erecting and repairing school-houses and the appurtenances, exceed four thousand dollars, except as herein otherwise provided for. And the common council are authorized and directed, when necessary, to borrow in anticipation the amount of taxes so to be raised, collected and levied as aforesaid.

§ 10. All moneys to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to or provided for said city, shall be paid over to the treasurer of said city, who, together with the sureties upon his official bond, shall be accountable therefor in the same manner as for other moneys of said city.

§ 11. All moneys required to be raised by virtue of this title, or received by said city for the use of the common schools therein, shall be deposited for the safe keeping thereof with the treasurer of said city, to the credit of said board of education, until drawn from said treasurer as hereinafter provided for.

The treasurer shall pay out the moneys, authorized by this act to be received by him, upon drafts drawn by the president and countersigned by the secretary of said board of education, which draft shall not be drawn except in pursuance of a resolution or resolutions of said board, and shall be made payable to the person or persons entitled to receive said money.

§ 12. The said board shall have power to and it shall be their duty:

1. To organize and establish such and so many schools in said city, including the common schools now existing therein, as they shall deem requisite and expedient, and to alter and discontinue the same;

2. To purchase and hire school-houses and rooms, lots or sites for school-houses, and to fence and improve them as they may deem proper;

3. Upon such lots and upon such sites, owned by said city, to build, enlarge, alter, improve and repair school-houses, out-houses and appurtenances, as they may deem advisable;

4. To purchase, exchange, improve and repair school apparatus, books for indigent pupils, furniture and appendages, and to provide fuel for the schools, and defray the contingent expenses of the school library;

5. To have custody and safe keeping of the school-houses, out-houses, books, furniture and appurtenances, and to see that the ordinances of the common council in relation thereto be observed;

6. To contract with, license and employ all teachers in said schools, and at their pleasure to remove them. The office of superintendent of schools in said city is hereby abolished;

7. To pay the wages of such teachers out of the moneys appropriated and provided by law for the support of common schools in said city, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised for that purpose by section nine of this act, by tax upon said city;

8. To defray the necessary and contingent expenses of the board, including the annual salary of the secretary of the board, provided the account of the expenses shall first be audited and allowed by the common council;

9. To have in all respects the superintendence, supervision and management of the common schools of said city, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, or the reception of pupils and their transfer from one school to another, and generally for their good order, prosperity and utility;

10. Whenever, in the opinion of the board of education, it may be advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the city, to report the same to the common council;

11. To prepare and report to the common council such ordinances and regulations as may be necessary and proper for the protection, safe keeping, care and preservation of school-houses, lots and sites and appurtenances, and all the property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations; and annually, on or before the first day of June in each year, to determine and certify to the said common council the sums in their opinion necessary or proper to be raised under the ninth section of this act for the year commencing on the first day of July thereafter, specifying the amount required for each of the purposes therein mentioned, and the reason therefor;

12. To unite with the school commissioners having jurisdiction in an adjoining town, and form, regulate and alter any district out of any portion of the said city and adjoining town, whenever they shall deem it necessary and proper to do so; and so far as such joint district or districts are concerned, such board shall, during the existence of such districts, have the same powers and duties which the said commissioners of schools now have;

13. Between the first day of July and the first day of August, in each year, to make and transmit to the county clerk, or such other officer as may be designated by law, a report in writing, bearing date the first of July, in the year of its transmission, and stating:

I. The number of school-houses in said city, and an account and description of all common schools kept in said city during the preceding year, and the time they have severally been taught;

II. The number of children taught in said schools respectively, and the number of children over the age of four years and under the age of twenty-one years residing in said city on the first day of January, in each year;

III. The whole amount of school moneys received by the treasurer of said city during the preceding year, distinguishing the amount received from the city treasurer, from the city tax, and from any other sources;



IV. The manner in which such moneys have been expended, and whether any and what part remains unexpended, and for what cause;

V. The amount of moneys received for tuition fees from foreign pupils during the year, and the amount paid for teachers' wages in addition to the public moneys, with such other information relating to the common schools of said city as may from time to time be required by the State Superintendent of Common Schools.

§ 13. Each school commissioner shall visit all of the schools in said city at least twice in each year of his official term; and the said board of education shall provide that each of said schools shall be visited by a committee of three or more of their number at least once in each term.

§ 14. The said board of education shall have power to allow the children of persons not resident in said city to attend the schools of said city under the control and care of said board, upon such terms as said board shall by resolution prescribe, fixing the tuition which shall be paid therefor.

§ 15. It shall be the duty of said board, in all their expenditures and contracts, to have reference to the amount of moneys which shall be subject to their order during the then current year, for the particular expenditures in question, and not to exceed that amount.

§ 16. The said board of commissioners shall be trustees of the school libraries in said city; and all the provisions of law which now are or hereafter may be passed relative to school district libraries shall apply to said commissioners, in the same manner as if they were trustees of a school district comprehending said city; they shall also be vested with the same discretion, as to the disposition of the moneys appropriated by the laws of this State for the purchase of libraries, which is therein conferred on the inhabitants of school districts. It shall be their duty to provide room or rooms and the necessary furniture therefor. The librarians shall report to the board the condition of the library or the libraries under their charge; and the said board, or secretary thereof, under the direction and by the resolution of said board, may make all purchases of books for said library or libraries, and may direct the mode of their distribution, and may cause to be repaired damaged books belonging thereto, and may sell any book in said library or libraries that may be deemed useless, and apply the proceeds to the purchase of other books for said library or libraries.

§ 17. The title of the school-houses, sites, lots, furniture, books, apparatus and appurtenances, and all other school property in this act mentioned, shall be vested in the city of Oswego, and the same while used or appropriated for school purposes shall not be levied or sold by virtue of any warrant or execution, nor be subject to taxation for any purpose whatever; and the said city in its corporate capacity shall be able to take, hold, and dispose of any personal or real estate transferred to it by grant, gift, bequest or devise for the use of the common schools of said city, whether the same be transferred in terms to said city by its proper style or by any other designation, or to any person or persons or body for the use of said schools.

§ 18. The common council of said city shall, upon the recommendation of said board of education, sell any of the school-houses, sites, lots, or any of the school property now or hereafter belonging to said city, upon such terms as the common council shall deem reasonable; the proceeds of all such sales shall be paid to the treasurer of said city, and shall be by said board expended in the purchase, repairs or improvements of school-houses, lots, sites or school furniture, apparatus or appurtenances.

§ 19. It shall be the duty of said board, at least fifteen days before the annual election for commissioners in each year, to prepare and report to the common council true and correct statements of the receipts and disbursements of moneys under and in pursuance of the provisions of this act during the preceding year, in which account shall be stated, under appropriate heads:

1. The moneys raised by the common council under the ninth section of this act;
2. The school moneys received by the treasurer of the city from the county treasurer;
3. The moneys received by the treasurer of the city under the ninth section of this act;
4. All other moneys received by the treasurer of said city, subject to the order of the board, specifying the sources from which they shall have been derived;
5. The manner in which such sums of money shall have been expended, specifying the amount under each head of expenditure; and the common council shall, ten days before such election, cause the same to be published in all of the newspapers of said city.

§ 20. The common council shall have power, and it shall be their duty, to pass such ordinances and regulations as the said board of education may report as necessary for the protection, preservation, safe keeping and care of the school-houses, lots, sites, appurtenances and appendages, libraries, and all necessary property belonging to or connected with the schools of said city, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in the act to incorporate the said city; and all such penalties shall be collected in the same manner that the penalties for the violations of the city ordinances are by law collected; and when collected shall be paid to the treasurer of the city, to the credit of the said board of education, and shall be subject to their order in the same manner as other moneys raised pursuant to the provisions of this act.

§ 21. It shall be the duty of the clerk of said city, immediately after the election of any person as commissioner of common schools, personally or in writing to notify him of his election; and if any such person shall not, within ten days after receiving such notice of his election, take and subscribe the constitutional oath, and file the same with the clerk of said city, the common council may consider it as a refusal to serve, and proceed to supply the vacancy occasioned by such refusal; and the person so refusing shall forfeit and pay to the city treasurer, for the benefit of the schools of said city, a penalty of ten dollars.

§ 22. It shall be the duty of said board of education to ascertain and report to the common council of said city the amount of any and all indebtedness of each of the common school

districts within said city, and to whom due; and the common council shall have power, and it shall be their duty, in each year that any such indebtedness shall become due, to cause the sums so becoming due from any of said districts to be assessed upon and collected from the taxable property within said city, for the payment of such indebtedness, in the same manner that other taxes are assessed and collected for the use of said board of education, and in addition to the sums authorized and required to be raised under the ninth section of this title.

§ 23. The connection of territory within and without said city, in joint districts, is hereby annulled, and the property of said districts, so far as the same is situated within said city, shall be disposed of in the manner now provided by law in the case where a district is annulled, except that the portion of the proceeds of such property as would by law be apportioned among the taxable inhabitants of said districts residing within the city of Oswego shall be paid to the treasurer of said city, to the credit of the said board of education, and shall be expended by said board in the purchase, repairs or improvement of school-houses, lots, sites, or school furniture, apparatus or appurtenances.

[Chap. 128, Laws of 1864, p. 229.]

§ 2. The board of education of the city of Oswego shall have power to appropriate suitable rooms in the school buildings of said city for the training school for primary teachers contemplated by chapter 418 of the Laws of 1863, without expense to the school fund of said city.

[Chap. 416, Laws of 1867, p. 1004, vol. 1.]

SECTION 1. The terms of office of all persons holding the office of school commissioner of the city of Oswego shall expire on the second Tuesday of May, one thousand eight hundred and sixty-seven.

§ 2. There shall be elected in said city on the first Tuesday of May, one thousand eight hundred and sixty-seven, in the same manner and under the same regulations as other ward officers, two commissioners of common schools for each ward, one of whom shall hold his office for one, and the other for two years, from the Tuesday next succeeding his election, and until his successor shall be elected or appointed and qualified. On such election the term shall be designated on the ballot for which it is intended the person voted for shall hold his office; and annually thereafter an election shall be held, at which shall be elected in like manner, one commissioner for each ward who shall hold his office for two years from the Tuesday next after his election and until his successor shall have been elected or appointed and qualified. They shall take the oath of office prescribed by the Constitution of this State and file the same with the city clerk.

§ 3. The registry of voters for the last preceding charter election shall be used at all elections for commissioners of schools, and no new registry shall be required.

§ 4. In case of vacancy in the office of commissioners of schools by reason of expiration of term, and failure to elect, the common council shall order a special election to fill such vacancy, to be held in like manner as other elections for commissioners of schools in said city.

§ 5. All acts and parts of acts inconsistent with this act are hereby repealed.

## OWEGO.

[Chap. 309, Laws of 1864, p. 739, as amended by Chap. 141, Laws of 1865, p. 250.]

SECTION 1. All school districts and parts of school districts lying within the corporate limits of the village of Owego, in the county of Tioga, in this State, are hereby consolidated and incorporated into one school district, which shall be called the union school district of the village of Owego.

§ 2. The schools organized under this act, to be designated the "union schools of the village of Owego," shall be free to all pupils between the age of five and twenty-one years residing in said union school district, and no rate bill shall hereafter be imposed therein. But non-residents of said union school district, if otherwise competent, may be admitted into any school within said union school district organized under this act, with the written consent of the board of school commissioners, or a majority of them, upon such terms and conditions as to tuition or otherwise, as such board may from time to time prescribe.

§ 3. Said union school district shall be divided into five sub-districts, each ward of said village to constitute one sub-district, to correspond in number and boundaries therewith.

§ 4. The said union school district shall be under the control and direction of six commissioners, who shall be called the "board of school commissioners." Each sub-district shall be entitled to one commissioner, who shall be a resident thereof, and one shall be elected from the village at large, who shall be the president of the board.

§ 5. Charles H. Everest of sub-district number one; John L. Matson, of sub-district number two; Andrew Coburn, of sub-district number three; William Smyth, of sub-district number four; H. D. Pinney, of sub-district number five, and T. I. Chatfield, at large, are hereby appointed commissioners, until their successors are elected as hereinafter provided.

§ 6. At the next election of corporation officers of Owego, there shall be elected a school commissioner from each district, and one at large; in the same manner and at the same time, as other corporation officers are elected, in place of those appointed in section five,

and thereafter at each annual charter election, two commissioners shall be elected to fill the places of the two whose terms of office will expire as hereinafter provided.

§ 7. The board of commissioners shall be divided into three classes, and it shall be their duty within ten days after the first election under this act, to meet and determine by lot which two commissioners shall serve for one year, which two shall serve for two years, and which two shall serve for three years.

§ 8. The board shall have power to fill all vacancies that may occur in their number, from any other cause than the expiration of their term of office, and the person so appointed shall hold his office until the next annual election of corporation officers.

§ 9. The board shall appoint a secretary and librarian, who shall hold their office at the pleasure of the board, and whose compensation shall be determined by them also.

§ 10. It shall be the duty of the board, previous to the fifteenth day of January, in each year, to estimate all the necessary expenses, over and above the public moneys accruing to the said union school district for the following purposes:

1. To purchase, lease or improve sites for houses, or sites with buildings thereon;  
2. To build, purchase, lease, enlarge, improve and repair, school-houses, out-houses, fences or appurtenances.

3. To purchase, exchange, improve and repair school apparatus, books, maps, charts, furniture and all necessary appendages, including books for indigent pupils only;

4. To purchase fuel and pay teachers' wages; also, to defray the necessary expenses of keeping the school-houses in order, including insurance, expenses of library and salary of librarian; to pay all expenses incurred by law, or necessary to carry into effect this act, and to refund loans legally contracted, and pay interest thereon.

§ 11. It shall be the duty of the board of commissioners, after having made their estimates as above enumerated for the current year, to transmit the same to the trustees of the village of Owego, whose duty it shall be to incorporate the amount with the estimated corporation expenses of the village, and certify the same to the assessors of the corporation.

§ 12. The additional amount so certified to the assessors, shall be levied and collected at the same time, and in the same manner, and by the same officers, as the other village expenses are.

§ 13. The board of commissioners shall have power, and it shall be their duty:

1. To organize, establish and maintain such and so many schools in said union school district as they may deem necessary, or to alter or discontinue any of the same;

To establish such rules and regulations concerning the order and discipline of said school, or schools, in the several departments thereof, as they may deem necessary to secure the best educational results; to grade and classify the schools of the said union school district, and to regulate the admission and their transfer from one class or department to another as their scholarship shall warrant; to prescribe the text books to be used in said schools, and to compel a uniformity in the use of the same, and to furnish the same to any pupil out of any moneys provided for that purpose;

2. To purchase or hire school-houses, rooms, lots or sites for school-houses, and improve the same; also, to make loans when necessary, and pay all expenses legally incurred;

3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages, including books for indigent pupils, and provide fuel; pay teachers' wages, insurance on buildings and property, salary of secretary and librarian, and defray contingent expenses of the schools and board of commissioners;

4. To contract with, examine, license, and employ teachers in said schools, and at the pleasure of the board remove them.

§ 14. It shall be the duty of the board to make an annual report to the school commissioner of Tioga county, at the time, in the same manner, and to the same extent, as other schools are required by law to make.

And said union school district, for the purposes of the apportionment and distribution of school moneys from any source, shall be recognized and regarded as a school district under the general school law of the state, and it is herein further provided that nothing in this act shall be construed to limit, restrain, or annul the powers of the Superintendent of Public Instruction. In all matters of dispute which shall be referred to him by appeal, and which shall arise under this act, or under and by virtue of any other act, which is now or shall hereafter be applicable to the school, school officers, teachers, patrons of schools, or school property of said union school district, his decision or orders shall be final and binding.

§ 15. It shall be the duty of the supervisors of the town of Owego, on receipt of the public school moneys, to pay over the same to the treasurer of the village of Owego, whose duty it shall be to credit the same, with all other moneys that may come into his hands for school purposes, to the board of commissioners, and pay out the same only on the orders of the board, signed by the president and countersigned by the secretary thereof, which orders shall only be drawn in pursuance of a resolution of the commissioners.

§ 16. All moneys raised pursuant to the provisions of this act, and all school moneys appropriated to or provided for said union school district, shall be paid to the treasurer of the village of Owego, who, together with his sureties, shall be accountable therefor in the same manner as for other funds of said village; and the board of trustees, in fixing the amount of the treasurer's sureties, shall include the moneys received by virtue of this act.

§ 17. The amount raised for teachers' wages and contingent expenses for any one year shall not be less than two nor more than four times the amount appropriated to said union school district, or the several districts and parts of districts composing the same, from all the common school funds of the State during the year previous; nor shall the amount to be raised in any one year, for the purchase of sites, erecting and repairing school-houses, and their appurtenances, exceed one thousand dollars, except as hereinafter provided.

§ 18. It shall be the duty of the board, whenever in their judgment it shall be necessary to raise more than the amount specified in the preceding section, to order an election for that purpose, and advertise the same for two weeks previous to said election in all the newspapers published in the said union school district, specifying the time when and the place where it will be held, and the object for which the money is to be raised; such election to be conducted by the board of commissioners, in the same manner and governed by the same rules and regulations as the usual charter election.

§ 19. The board are hereby authorized to make all needful rules, by-laws and regulations for their own proceedings, and for the order and government of the schools and protection of the property under their control.

§ 20. The title, safe keeping and custody of all school-houses, sites and their appurtenances, books, furniture, and all other school property belonging to the said union school district, or to the former school districts and parts of districts included in and composing the same, shall be vested in the said board of school commissioners as a corporation, who shall have power to hold, dispose of, or transfer the same as the interest of the said union school district may seem to require. And said property while held for school purposes shall not be levied upon or sold, by virtue of any warrant, execution or other process, nor be subject to taxation for any purpose.

§ 21. The various school offices in the several districts composing this union school district shall terminate whenever this act shall take effect, except so far as may be necessary to close up all unsettled business in their several districts.

§ 23. It shall be the duty of the board of school commissioners to procure suitable blank books for the use of the teachers to be employed in the schools under the charge of said board; and it shall be the duty of each teacher, so employed, to enter in one of said blank books the names of the pupils attending his or her school or department thereof, their ages, the names of the persons who send them, and the number of days each pupil attends; and also the facts and dates of each inspection of the school by the said board, or any member thereof, or other official visitor, any other facts, and in such form as the said board or the Superintendent of Public Instruction may require. And each teacher shall, by his or her oath or affirmation, verify his or her entries in such book; and the entries so made and verified shall be regarded as *prima facie* correct, and shall constitute the record of facts herein required to be noted and kept; also the school lists from which the daily, or average daily, attendance shall be determined. And such oaths or affirmation may be taken before the president of the said board of school commissioners. And the president of said board of school commissioners shall have the power and it shall be his duty, when required, and without charge, to take any affidavit or administer and certify any oath or affirmation within said union school district, in all cases pertaining to any school, school matter, or proceeding under the charge or jurisdiction of said board when any affidavit, oath, or affirmation may by law be authorized or required.

§ 24. Each member of the said board of school commissioners shall visit all the schools in said union school district under the charge of said board, at least once in each year of his official term, and the said board of school commissioners shall provide that each of said schools shall be visited by a committee of their number at least once in each term, who shall report in writing to said board the condition of each school, and make such suggestions as they may deem useful or proper.

§ 25. The record of the said board of school commissioners, or a transcript thereof, certified by the secretary under oath, shall be received in all courts and places as *prima facie* evidence of the facts therein set forth.

§ 26. Said board of school commissioners shall, at the end of each school year, submit a report in writing of their doings as such board for the preceding year, and shall state therein the number and condition of the schools in said union school district under their charge, and the number of scholars attending the same, the studies pursued, the amount of moneys received from the State, and from any other source, the expenditure of the same and for what purpose or objects, and all the particulars in detail relating to the schools in said union school district under their charge, and making any suggestions which they may think useful, which report may, if the board think proper, be published in one or more of the newspapers published in said union school district, the expenses of said publication to be defrayed from any moneys in the hands of said board set apart for such purpose.

§ 27. The board of school commissioners, in its corporate capacity, may take, hold and dispose of any real or personal estate, not exceeding one hundred thousand dollars, transferred to it by gift, grant, devise, or bequest, for the use, benefit, or advantage of any particular school or schools organized under this act.

§ 28. Hereafter, it shall be the duty of the clerk of the village of Owego, immediately after the election of any person to the office of school commissioner, under this act, to notify him in writing of such election, and within ten days after receiving notice of such election (or in case the board appoint a commissioner, one or more to fill a vacancy or vacancies, then within ten days after such appointment); the said commissioner or commissioners, before he or they shall be permitted to discharge any of the duties of such office, shall take the oath of office prescribed by the Constitution of this State, and file the same with the village clerk.

§ 29. All former or existing acts, or parts of acts, repugnant to or inconsistent with the provisions of this act, or the act to which this act is an amendment, are hereby repealed so far as relates to the said union school district of the village of Owego.

## OYSTER BAY, DISTRICT No. 4.

[Chap. 359, Laws of 1860, p. 605.]

SECTION 1. School district number four in the town of Oyster Bay, in the county of Queens, shall form a permanent school district, and shall not be subject to alteration by the town superintendent, or school commissioners for the town in which said district is situated.

§ 2. The said district shall be under the direction of a board, to be styled "the board of education," which board shall consist of five members, three or more of whom shall constitute a quorum for the transaction of business. Daniel V. Weeks, Jacob F. Count and Jacob S. Underhill shall compose the first board of education, and shall hold their office from one to five years; that is to say one shall go out of office in each year, and in the order in which their names stand recorded in this section.

§ 3. There shall be elected in each year, in said district, one member of said board of education, who shall be a resident and taxable inhabitant of said district, and shall hold his office for five years. The said election shall take place at the annual meeting of said district; and the board of education shall appoint three suitable persons as inspectors of said elections, and of all other elections provided for by this act, within thirty days next preceding any such election: such election shall be by ballot, and notice thereof shall be given, the votes shall be canvassed, and the result of the election determined in the same manner as in the case of the annual election of town officers.

§ 4. The board of education may make all necessary by-laws for their government; they shall have the entire control and management of all the common schools within the said district, and all the property belonging to the same; they shall have and possess, within said district, all the rights, powers, and authority of school commissioners. They may appoint a collector with all the powers and duties of a district collector, or may employ the town collector for that purpose; and such collector shall collect and pay over the school moneys assessed upon said district, to the treasurer of the board of education in the same manner and under the same conditions as are imposed by the laws of the town of which he is collector. They shall require two of the members of said board to visit each school in said district at least once in each week, to render such assistance to the teacher and advice to the pupils as may be necessary, and to see that the regulations are rigidly adhered to.

§ 5. The said board of education are hereby authorized and directed to levy and collect by tax in each year, upon all the taxable property in said district, such sums as may be necessary, not exceeding in amount one-fourth of one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the town of Oyster Bay; and the said board shall add to the amount of any warrant for the collection of taxes such amount as they shall deem proper, as the collector's fees for collection of taxes, which compensation, however, shall in no case exceed five per cent on the amount of any warrant.

§ 6. The town supervisor of the town of Oyster Bay shall pay over to the treasurer of the board of education all the public moneys to which said district number four shall be entitled for school purposes.

§ 7. The said board of education shall call an annual district meeting at such time in the year as they think proper, and shall submit thereto a full report in writing of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge and the number of scholars attending the same, the studies pursued, the amount of moneys received from the State, as well as the amount required in the district for school purposes, and the expenditure of the same, and, generally, all the particulars relating to the schools in said district; which report shall, immediately after it is made, be published in a newspaper published in the town of Oyster Bay, for two weeks, and once in each week.

§ 8. The board of education shall have control and charge of the district school library in said district; they may employ a librarian, make such addition to the library and such regulations in relation thereto as they shall deem necessary.

§ 9. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same by posting up a written or printed notice thereof in at least four public places in said village, and by publishing the same in a newspaper published in the village of Glen Cove, at least one week previous to the time fixed for said meeting, which notice shall state the time and place of such meeting, and the purpose for which the same is called; and no business shall be transacted at any such special meeting except that stated in the notice calling the same.

## OYSTER BAY, DISTRICT No. 5.

[Chap. 573, Laws of 1857, p. 223, vol. 2.]

SECTION 1. School district number five, in the town of Oyster Bay, in the county of Queens, including within its boundaries the village of Glen Cove, shall form a permanent school district, and shall not be subject to alterations by the town or county superintendent of common schools for said town of Oyster Bay, or said county of Queens.

§ 2. The said district shall be under the direction of a board, to be styled "the board of education;" such board shall consist of five members, three of whom shall constitute a quorum for the transaction of business. Isaac Coles, Joshua T. Wright, Stephen B. Craft, Joshua Kirk and Samuel Frost shall compose the first board of education, and shall hold their office from one to five years; that is to say, one shall go out of office in each year, and in the order in which their names stand recorded in this section.

§ 3. At the first annual meeting held in said district, and at each annual meeting thereafter, there shall be elected one member of said board of education, who shall hold his office for the term of five years; also a district collector, both of whom shall be residents and tax payers in said district; and said collector shall collect and pay over the school moneys assessed upon said district to the treasurer of the board of education; in the same manner and upon the same conditions as the town collector; and the board of education shall appoint three suitable persons as inspectors of said election, and all other elections as provided by this act, within thirty days next preceding any such election; such elections shall be by ballot, and notice thereof shall be given, the same shall be held and conducted, the votes shall be canvassed, and the result of the election shall be determined in the same manner as for town officers.

§ 4. The said board of education shall, at their first annual meeting, choose one of their number for president, one for secretary, and one for treasurer, who shall hold office for one year. The treasurer shall execute a bond conditioned for the faithful performance of his duties, in such form and with such sureties as the said board shall approve. An election for said officers shall be held thereafter on the same day of the same week of the same month on which the first election was held. If from any cause the election shall not take place on the day appointed, it shall be held within one week thereafter. Until such election, the old officers shall continue to perform their respective duties.

§ 5. The said board of education may make such by-laws as they may deem necessary for their own government; they shall have the entire control and management of all the common schools within their said district, and all the property belonging to the same; they shall have and possess, within the said district, all the rights, powers and authority of town or county superintendent of common schools; they shall require one of the members of said board to visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary, and to see that the rules and regulations are strictly enforced. And the said board of education shall have the power to take by purchase and devise, and to hold any real and personal estate necessary for the purposes of this act, and also to sell and convey the school-house or school-houses, and site or sites, situated in the district, and to execute and deliver good and valid conveyances therefor, when authorized by a majority of votes of the tax payers of the said district present at a special meeting called for that purpose.

§ 6. All moneys belonging to the said district shall be deposited in a bank or trust company, to be designated by the board of education, or loaned out on interest upon ample security under the direction of the board of education.

No moneys shall be paid out, or securities changed, except under the direction of the board of education, and then only by order of the president, countersigned by the secretary.

§ 7. Whenever the said board of education shall deem it necessary to erect one or more school-houses in said district, and before they shall proceed to raise any money as provided in section eight, they shall prepare an estimate, showing the location proposed, the cost of the ground, a plan of the building, with the estimated cost of construction, and shall submit the same to the electors of said district, at a special meeting to be called for that purpose, in the same manner as other special meetings are required to be called; and if a majority of all the electors present shall vote in favor of the same, then the said board may proceed to erect said school-house or houses in the manner proposed by said estimate; and if the sum authorized to be raised by section eight of this act should be insufficient to pay the estimated cost of such erection or erections and premises, with the expense of grading and regulating the grounds, building the necessary out-houses and fences, with the necessary books, stationery and appurtenances for the said school-house or houses and rooms; then the said board of education may raise, in addition to the sum mentioned in section eight of this act, and in the manner therein authorized, a sum not exceeding one thousand dollars; and they are also authorized to levy and collect such amount as may be necessary to pay the principal or interest of such additional sum or sums, as the same may become due, in the manner provided by section nine of this act.

§ 8. The said board of education are hereby authorized and empowered to raise a sum, not exceeding three thousand dollars, for the purpose of erecting a school-house or houses in said district, either by tax on said district or a loan to be secured by a mortgage upon the public school property of said district, to be executed by said board in their official capacity, signed by the president and secretary, or by the issue of certificates of loan, in sums not less than one hundred dollars, the said certificates to be signed by the president of said board, and to be a lien upon the school district property.

§ 9. The said board of education, in addition to the other taxes which they are authorized to raise by this act, may levy and collect a sum sufficient to pay interest on loans as the same becomes due; and whenever any part of the principal of such loans becomes due, they shall levy and collect an amount sufficient to pay the same; which sums, when collected, shall be paid over by said board in discharge of such principal and interest.

§ 10. The said board of education are hereby authorized and directed to levy and collect by tax, in each year, such sum as may be necessary for teachers' wages and contingent expenses, upon all the taxable property in said district, not exceeding in amount one-fifth of one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the town of Oyster Bay; and the said board shall add to the amount of any warrant for the collection of taxes, such amount as they shall deem proper as the collector's fees for collection, which compensation, however, shall in no case exceed five per cent on the amount of any warrant.

§ 11. The town superintendent of common schools of the town of Oyster Bay, or the county superintendent of common schools of the county of Queens, whichever one it may

be, shall pay over to the treasurer of the board of education all the public moneys to which said district shall be entitled for school purposes.

§ 12. The said board of education shall call an annual district meeting at such time in the year as they may think proper, by giving the notice now required by law for annual meetings in school districts, and at such meeting they shall submit thereto a full report in writing of their doings at such board, and they shall state therein the number of children residing in the said district of whom public money is drawn, how many white children and how many colored; they shall also state the number and condition of the schools in said district, under their charge, and the number of pupils attending the same, the studies pursued, the amount of moneys received from the State or other sources, as well as the amount raised in the district for school purposes, and the expenditures of the same, and generally all the particulars relating to the schools in said district.

§ 13. The board of education shall have control and charge of the district school library in said district; they may employ a librarian, make such additions to the library, and such regulations therefor as they shall deem necessary.

§ 14. A school for colored children may be organized by said board, and be supported in the same manner as other schools shall be supported, under and by virtue of this act.

§ 15. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same by posting up a written or printed notice thereof, in at least six public places in said district, and by publishing the same in the newspapers published in said district, at least one week previous to the time fixed for such meeting, which notice shall state the time and place of such meeting, and the purpose for which the same is called; and no business shall be transacted at any such special meeting except that stated in the notice calling the same.

§ 16. All laws and parts of laws inconsistent with this act are hereby repealed, as far as they relate to school district number five, in the town of Oyster Bay, county of Queens.

## PALMYRA.

[*Chap. 296, Laws of 1857, p. 600, vol. 1.*]

SECTION 1. School district number one, in the town of Palmyra, Wayne county, shall form a permanent school district, and shall not be subject to alteration by the district commissioner of common schools, except by the consent and concurrent action of the board of education, hereinafter constituted for said district.

§ 2. The said consolidated district number one, heretofore comprising three districts in said town, shall receive such portion of the one-third of the public money distributed among the several school districts in pursuance of an act entitled "An act to establish free schools throughout the State," passed April twelfth, eighteen hundred and fifty-one, as such districts may be entitled to receive, estimating and computing each qualified teacher employed in said school for the period of six months, as a separate district.

§ 3. The said district shall be under the direction of a board, to be styled "the board of education of the Palmyra classical union school." And the said board of education as hereinafter organized, and their successors in office, are hereby constituted a body corporate, by the name of "the Palmyra classical union school," and empowered to establish, organize and maintain a classical department in the school building now in said district in the village of Palmyra, by that name, which department shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies, and to a share in the distribution of the moneys of the literature fund of this State, as the academies thereof. And the said board shall possess all the powers and be subject to all the duties in respect to said district, that the trustees of common schools now possess or are subject to, together with such other powers and duties as are given and imposed by this act.

The said board shall consist of nine members, a majority of whom shall constitute a quorum for the transaction of business, viz.: Stephen Hyde, Joseph W. Cornin, Joseph C. Lovett, James Gallup, Martin Butterfield, Lyman H. Tiffany, Ornon Archer, William F. Aldrich and George G. Jessup. The three first named shall constitute the first class and hold their office until the first Monday of September, one thousand eight hundred and fifty-seven; the next three named shall constitute the second class, and hold their office until the first Monday of September, one thousand eight hundred and fifty-eight, the last three named shall constitute the third class, and hold their office until the first Monday of September, one thousand eight hundred and fifty-nine.

There shall be elected on the first Monday of September of each and every year hereafter, three trustees to take the place of those whose term of office shall then have expired; and all vacancies in the said board of education shall be filled at the annual meeting on the first Monday of September. The said board of education shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time.

Special meetings of the board may be called by the president, or, in his absence or inability to act, by the secretary of the board, as often as the interests of the school may demand, by giving personal notice to each member thereof, or causing a written or printed notice to be left at his place of residence, at least twenty-four hours before the hour of meeting. And if any member of this board shall refuse or neglect to attend any three successive meetings of the board without satisfactory cause of non-attendance being shown, the board may declare his office vacant, and appoint some other person to fill such vacancy until the next annual meeting. No member of said board shall receive any pay or compensation for his services.

§ 4. There shall be elected at the first and at all subsequent annual meetings, a collector and a clerk, who shall hold their office for one year, and said election of officers shall be by ballot. Notice of the annual meetings shall be given by the clerk of said district at least one week previous to the time of holding said meeting, by publication in the village papers, and by posting notices thereof in at least five public places in said district. The president of the board of education shall preside at the annual meetings, and the clerk shall keep the record of their doings, as well as of all adjourned meetings. The officers of the meeting shall conduct the canvass of the ballots cast, declare the result, and the result shall be entered by the clerk in his book of records.

§ 5. The collector shall collect and pay over the school moneys assessed upon the said district to the treasurer of the board of education. He shall possess all the powers and be subject to all the duties of a town collector, and shall, within ten days after receiving notice of his election, execute and deliver to said board of education a bond, in such penalty and with such sureties as the said board may require, conditioned for the faithful discharge of his duties; in case such bond shall not be given within ten days after receiving such notice, such office shall become vacated, and said board may appoint a collector to supply such vacancy.

§ 6. The said board of education shall at their first meeting after the annual district meeting, choose one of their number for president, one for secretary and one for treasurer, who shall hold their offices for one year. In the absence of either of such officers at any regular meeting of the board, a president or secretary may be appointed for the time being. The election of such officers shall be held thereafter annually. If from any cause the election shall not take place on the day designated, it shall be held within one week thereafter, and until such election shall take place, the old officers shall continue to perform their respective duties. The treasurer shall, within ten days after receiving notice of his election, execute and deliver to said board of education a bond, with such penalty and with sureties as they may require. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and said board of education may make an appointment to fill such vacancy. The record of the clerk of the district and the record of the secretary of the board, or a transcript thereof, certified by the president and clerk, shall be received in all courts as prima facie evidence of the facts therein set forth.

§ 7. The said board of education shall, at the annual district meeting in each year, submit a full report in writing of their acts as such board, and shall state therein the condition of the school in said district under their charge, the number of scholars in attendance, the amount of moneys received from the State and from all other sources, as well as the amount received from the district for school purposes, the expenditure of the same, and all matters of interest in detail relating to the schools in said district.

§ 8. The said board of education are hereby authorized and directed to levy and collect by tax, in each and every year, upon all the taxable property in said district, such sums of money voted to be raised at the annual and special meetings of said district. And in no instance shall the district be authorized to raise a sum exceeding the one-half of one per cent on the value of such taxable property, as the same shall be assessed by the assessors of the town as taken from the last assessment roll. Such sums of money shall be applied to the payment of teachers' wages, the necessary contingent expenses of the school, insurance and repairs of school buildings in said district. An estimate of the amount of moneys to be raised by tax for the operation of the school, shall be prepared by said board and presented at each annual meeting.

§ 9. The title of all real and personal property belonging to said district shall be and the same is hereby vested in said board of education, and the said board in its corporate capacity may take and hold any real or personal estate transferred to it by gift, grant, bequest or devise, for the use of the school in said district, also dispose of the same under the direction of a resolution passed at any annual meeting. They shall have power to divide the school into four grades or departments, including the academical department, and to fix the rate of tuition in each grade, and have the exclusive control and management of all public schools within said district. Said board shall have power to make all warrants for the collection of taxes to be raised by them returnable in sixty days, and to renew the same whenever it shall become necessary, also be empowered to direct that the several sums assessed may be raised in two or more installments.

§ 10. There shall be no more than four terms or quarters in each year of said school. The tuition fee in the several departments or grades in said school shall not, for the pupils whose parents or guardians reside within the territory of said district, exceed per term or quarter for each pupil as follows, that is to say: In the first grade or department such tuition fee shall not exceed one dollar; in the second grade, one dollar and twenty-five cents; in the third grade, two dollars; and in the fourth grade two dollars and fifty cents. The tuition for all other pupils admitted to said school shall be regulated by said board from time to time, as they shall deem necessary, and such amounts as they shall think proper.

§ 11. All moneys to be raised by virtue of this act, and all moneys by law appropriated to or provided for said district, shall be paid to the treasurer of said board. Said treasurer shall not pay out any of such moneys except by resolution of said board, and upon an order drawn by the president and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 12. All moneys belonging to said district, or to which said district may be entitled for school or other purposes, in whose soever hands the same may be, shall be paid over to the treasurer of said board of education.

§ 13. The said board of education may call special meetings of the inhabitants of said district whenever they may deem it necessary, and it shall become the duty of the clerk of the district, upon the requisition of said board of education, to give public notice thereof



by publishing the same in one or more newspapers published in the district, and by posting printed notices of the same in at least ten public places in the district.

§ 14. All laws and parts of laws inconsistent with this act are hereby repealed, so far as relates to school district number one, in the town of Palmyra aforesaid.

PENN YAN.

[Chap. 765, Laws of 1857, p. 647, vol. 2.]

SECTION 1. All that part of the county of Yates, including the village of Penn Yan, comprised within the following limits, that is to say: Beginning on the town line of Benton and Milo, at the north-east corner of lot number thirty-two, township number seven, in the first range in the said town of Milo; thence south on the line of lots to the south-east corner of lot number thirty-one in said township number seven; thence west on the line of lots to the center of a small gulf on or near Alfred Brown's land; thence down the stream which runs in said gulf to the road leading from the foot of the Crooked lake to Penn Yan, called Lake street; thence along said road or street north-easterly toward Penn Yan, until it strikes the south-west line of a lot of land conveyed by Henrietta J. Monell to Calvin Carpenter; thence along said Carpenter's south-west line to the Crooked lake canal; thence up said canal to the lake; thence along the north and west shore of said lake to a point where the west line of fraction lot number fifty-two, in the town of Jerusalem, strikes the lake; thence north along the west line of said lot number fifty-two, and the west line of lot number thirty-eight, in said township number seven, to the town line of Benton and Milo; thence westerly on the town line to the south-west corner of lot number sixty-three, in township number eight, first range, in the town of Benton; thence north on the west line of said lot number sixty-three to the north-west corner thereof; thence easterly on the line of lots, to the north-east corner of lot number forty-seven in said township number eight; thence south along the line of lots to the place of beginning, shall hereafter, for the purposes in this act mentioned, form but one school district, which shall be called the Penn Yan union school district.

§ 2. The board of education hereinafter created shall have power, by resolution of said board, to alter and change the boundaries of said district, by and with the written consent of the school commissioner in Yates county.

§ 3. The following named persons, to wit: Daniel W. Streeter, Martin Spencer, George Wagener, Levi O. Dunning, Benedict W. Franklin, Darius A. Ogden, Ebenezer B. Jones, Charles C. Sheppard, and Jeremiah S. Gillett, resident in the said district, and their successors to be chosen as hereinafter provided, are hereby constituted a corporation by the name of "The board of education for the village of Penn Yan." The three persons first named in this section shall hold their office until the first Monday of January, one thousand eight hundred and fifty-nine; the three persons next named shall hold their office until the first Monday of January, one thousand eight hundred and sixty, and the three persons last named shall hold their office until the first Monday of January, one thousand eight hundred and sixty-one, and until their successors shall be chosen, and enter upon the discharge of the duties of their offices respectively.

§ 4. The term of office of the trustees to be elected under the provisions of this act shall be three years from the first Monday of January next succeeding their election, and until their successors shall enter upon the discharge of the duties of their offices respectively. The annual meeting of said district shall be held on the first Monday of October in each year, at such time and place in said district as the board of education shall previously appoint. The president of the board, or, in his absence, the president for the time being, shall preside, and the district clerk, or, in his absence, the clerk for the time being, shall act as secretary thereof.

§ 5. At the annual meeting in the year one thousand eight hundred and fifty-eight, three trustees shall be elected to fill the places of the three persons first named in the third section of this act. The places of the next three shall be filled at the annual meeting in the year one thousand eight hundred and fifty-nine, and of the next three in like manner in the year one thousand eight hundred and sixty, and annually thereafter on the day above specified for the first election, there shall in like manner be elected three trustees to fill the places of those whose terms of office shall next thereafter expire, as herein provided. Every officer elected under this act shall enter on the duties of his office on the first Monday of January next succeeding his election. Within ten days after any such election, the clerk shall certify to the board of education the names of the officers so elected.

§ 6. Said board of education, and their successors in office, shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of this act, or of any law, and a majority of the board shall form a quorum.

§ 7. There shall annually be appointed by said board of education a clerk, collector, librarian, and treasurer of said union district, who shall each within ten days after receiving notice in writing of his appointment, and before entering upon the duties of his office, execute and deliver to said board of education a bond, in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and said board of education shall thereupon make an appointment to supply such vacancy.

§ 8. Notices for annual elections and all other meetings of said district shall be given by said board of education at least ten days before such election or meeting, by publishing such notice once in each of the newspapers printed in the village of Penn Yan, and by posting the same on the door of each school-house in said district.

§ 9. In case of a vacancy in said board, or of any other office mentioned in this act occasioned by incapacity or any other cause other than the expiration of the term of office, said board of education may make an appointment to fill said vacancy for the unexpired term.

§ 10. Said board of education shall possess all the powers and rights, and be subject to all the duties in respect to said district, and all the schools under their charge, that the trustees of common schools now have or may possess or be subject to, and such other powers and duties as are given or imposed by law. The clerk, collector, and librarian of said district shall possess all the powers and be subject to all the duties in respect to said district that like officers of common schools now have or may possess, or be subject to, and such other powers and duties as are or may be given or imposed by law.

§ 11. From and after the first meeting of the board of education under this act, the office of trustee, librarian and collector, in each of the school districts included within the limits of the said union school district, shall be abolished, and the title of the property of the said school districts, and of the said union district, real and personal, shall from thenceforth become the property of and be invested in the said board of education in its corporate capacity, as created by this act; and said board shall settle all business of the several school districts and parts of districts in said union district, then remaining unsettled.

§ 12. The said board of education shall, at its said first meeting, and annually thereafter, at their meeting held next after the first Monday of January in each year, appoint one of their number president. The clerk of said union district shall act as secretary to said board. In the absence of either of said officers at any regular meeting of the board, a president and secretary may be appointed for the time being.

§ 13. The said clerk, in addition to such other duties as are or may be imposed on him by law, or required of him by the board, shall keep a record of the proceedings of said board of education, which record, or a transcript thereof, certified by the president and secretary, shall be received in all courts, and for all purposes, as presumptive evidence of the facts therein set forth.

§ 14. The said board of education shall have power, and it shall be their duty:

1. To establish and organize a classical school in the village of Penn Yan, to be known by the name of "the Penn Yan academy," which school shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies, and to share in the distribution of the moneys of the literature fund of this State, as the academies thereof;

2. To establish and organize such and so many primary schools in said district, including for that purpose the common schools therein, as they shall deem requisite and expedient; and to alter and discontinue, or change and consolidate, the same;

3. To build, purchase or hire school-houses, rooms, lots, or sites for school-houses, and to fence, improve, adorn and repair the same, as they may think proper;

4. Upon such lots or sites, and upon any lot or site now owned by any school district within the limits of said union district erected by this act, to build, enlarge, alter, improve, adorn and repair school-houses, out-houses and appurtenances, as they may deem advisable;

5. To purchase, exchange, improve, and repair school apparatus, globes, maps, furniture and appendages, books for indigent pupils and for the school library, to provide fuel and lights, and defray the contingent expenses of the schools, the expenses of the library, and the salary of the librarian;

6. To have the custody and safe keeping of the school-houses, out-houses, and all the real and personal property of the said union school district and primary schools, and see that the ordinances and by-laws of said board in relation thereto be observed;

7. To contract with and employ all teachers in any of the schools under their charge, and in all branches or departments thereof and at their pleasure to remove them;

8. To pay the wages of such teachers out of the public moneys and tuition fees received by them, and the deficiency, if any, out of the moneys to be raised by tax for general purposes of education under this act;

9. To fix the ratio of tuition fees in said academy, if any shall be charged, and to designate some person or persons to whom the same may be paid previous to issuing the warrant for the collection thereof, and, by a resolution of said board, to be recorded by the secretary to exempt from the whole or any part of the tuition fees, such persons as they may deem entitled to such exemption from indigence or any other sufficient cause, and to graduate such tuition fees according to branches of instruction pursued;

10. To make out a rate bill as often as they shall deem proper, containing the name of each person liable to pay tuition fees, for tuition in said academy, who shall not have paid the same prior to making out such rate bill, and the amount for which such person is liable, adding thereto a sum not exceeding five cents on each dollar for collector's fees (which fees shall be fixed by said board at the time of making out every rate bill), to annex thereto a warrant for the collection thereof, to be signed by the president of said board, or a majority of the members thereof, and deliver the same to the collector, who shall collect the same in the same manner as collectors of school districts are by law authorized and required to execute like warrants issued by the trustees of common school districts, and who, in the execution of the same, shall be under the same protection, possess all the powers, and be subject to, all the duties, as such collectors may have or possess, and be subject to in respect to like warrants; and for this purpose the jurisdiction of said board of education and of said collector shall extend to any other district or town, and to any resident thereof who

may be liable for such tuition in said academy, in the same manner, and with like authority, as to said union district or residents thereof;

11. To have in all respects the superintendence, supervision, management, and control of all the schools mentioned or contemplated in and by the provisions of this act; to prescribe the course of studies therein, the books to be used, and establish an uniformity in respect to such course of study and books; from time to time to adopt, alter, modify, and repeal, as they may deem expedient, rules, regulations and ordinances for the organization, government and instruction of such schools; for the reception of pupils and their transfer from one school to another; for the expulsion of any pupil from any of said schools for misconduct; for the promotion of good order in said schools, their prosperity and public utility; for the protection, safe keeping, care and preservation of school-houses, lots, sites, fences, ornamental trees and shrubbery, and appurtenances, and all other property connected with or appertaining to such schools; and to cause such rules, regulations, ordinances and by-laws to be printed and published in such manner as they may deem best calculated to give general information.

§ 15. Said board of education shall have power, and it shall be their duty forthwith to purchase a suitable lot, so situated as best to accommodate the whole of said union district so far as practicable, and procure a clear title therefor, to be vested by deed in said board of education; to cause said lot to be properly graded, fenced, planted with trees and otherwise properly improved; to erect thereon a suitable and proper building or buildings and necessary out-houses, to furnish the same with all proper, useful, and necessary furniture, apparatus and appendages, as soon as the building is in a proper condition, employ a sufficient number of well qualified teachers, and cause a school to be commenced therein to be called "the Penn Yan academy," in which shall be taught only the higher branches of education. All the other schools in said union district, including the common schools therein, and which shall be under the charge of the board of education, shall be known as primary schools, in which no tuition fee shall be charged, nor any rate bill made out, but the same shall be free schools. Said primary schools shall be used as preparatory schools for the instruction of children until they arrive at a certain age, or attain a certain proficiency in learning, who shall then be transferred, upon proper testimonials, into the academy aforesaid, the age, qualifications, and testimonials to be prescribed by the by-laws, rules, and regulations of the board of education.

§ 16. Said board of education shall have power, and it shall be their duty, to raise, from time to time, by tax upon all the real and personal estate within the bounds of said union district which shall be liable to taxation for town and county charges, such sums of money as may be determined by resolution of said board to be necessary for any and all the purposes mentioned in this act, or to meet any deficiency connected with the subject of education in said district, to provide for which, power shall be given to the said board by the provisions of this act, or any law relating to common schools, or the rules and regulations of the Superintendent of Public Instruction. Said board of education shall, at the commencement of each year, make an estimate, by the best means in their power, of the amount of money which will be needed for all the purposes of education, and other purposes provided for by this act, over and above the public moneys, and moneys to be received from other sources, if any, and shall cause the same to be raised by one assessment or warrant, and not more than two taxes for such purposes shall ever be raised in one year. For the collection of such taxes the board of education may employ the village or town collector at their discretion. The said board of education shall not have power to raise by tax, in any one year, for the purpose of this act, except to carry into effect section fifteen of this act, any further or greater sum than twelve hundred dollars, unless they shall be authorized to do so by a vote of a meeting of the persons qualified to vote in said union district for school district taxes, at an annual meeting of the said district, or at a special meeting of the inhabitants to be called by the board of education for that purpose.

§ 17. For the purpose of carrying into effect the provisions of section fifteen of this act, the said board of education shall, as soon as practicable, make an estimate of the money which will in their opinion be necessary therefor, and shall assess, levy, and collect the same, by tax upon the real and personal estate as specified in section sixteen of this act. They shall for this, and all other taxes raised by them, make out a tax list in the manner and form in which tax lists are required to be made by trustees of school districts, so far as such form is applicable, annex thereto a warrant in like form, signed by the president or a majority of the members of said board, and deliver the same to the collector, which when so made and signed shall be as effectual, to all intents and purposes, as like tax lists and warrants when made by the trustees of common school districts. Said board may, in respect to the collection of taxes, conform to the provisions of the twenty-ninth, thirtieth, and thirty-first sections of chapter one hundred and eighty, of Session Laws of one thousand eight hundred and forty-five, and require the collector to comply with the provisions of said sections, so far as the same are applicable. Said board may make their warrants returnable at discretion, not less than thirty days, nor more than ninety days from the issuing thereof. The said board may assess, levy, and collect the amount of taxes to be raised under this section, in not less than three annual instalments.

§ 18. All moneys to be raised by virtue of this act, and all moneys by law appropriated to or provided for said district, shall be paid to the treasurer of said board, who, together with the sureties upon his official bond, shall be accountable therefor to the said board of education; said treasurer shall not pay out any of such moneys except by resolution of said board, and upon an order drawn by the president and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 19. Special meetings of the board of education may be called by the president, or, in his absence or inability to act, by the secretary or any member of said board, as often as neces-

sary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his place of residence at least twenty-four hours before the hour for such special meeting. No member of said board shall receive any pay or compensation for his services.

§ 20. Said board of education shall annually make a like report in all respects as required from trustees of common school districts to the school commissioner. They shall make reports only of the number of scholars attending any school in said union district, and the ages thereof, so far as the same shall be necessary to ascertain and apportion the public money to be paid to said district. Such reports shall be received by the school commissioner instead of the reports now made by trustees of the school districts included in said union district. The supervisors of the several towns from which the said union district is taken shall, in making their apportionment of school or library moneys, allot to said union district its proportion of said moneys according to law, regulating its apportionment to districts formed out of two or more towns, and the report of its board of education shall be regarded as the reports of its trustees. All such sums shall be paid by said supervisors to the treasurer of said board of education, at the same time and in the same manner as to trustees of school districts. A copy of the reports of said board of education shall be filed with the clerk or secretary of the board. The board of education shall, at the close of each year, publish in one or more of the village newspapers a report of the moneys received and expended by them during the year, showing the sources from whence received, and the objects of expenditure.

§ 21. Whenever, in the opinion of said board, a sale or exchange of any primary school-house or house and lot would be proper, said board may cause such sale or exchange to be made, and may buy a new site, or may at any time build a new house for the accommodation of any portion of said district.

§ 22. All the school property of said board of education, real and personal, while used for and appropriated to school purposes, shall be exempt from all taxes and assessments, and shall not be liable to be levied upon or sold by virtue of any warrant or execution. Said board of education, in their corporate capacity, shall be able to take, hold and dispose of any real or personal estate, transferred to it by gift, grant, bequest or devise, for the use of said district, or any schools under their charge. Said board shall not have power to sell, grant, dispose of or incumber said academy school lot. No portion of the library money paid to said board of education shall be expended for teachers' wages, but shall be appropriated exclusively for the increase and benefit of the library.

§ 23. All the lands included in the bounds of said union district shall be subject to taxation therein under this act, without regard to the residence of the owners thereof, and the board of education may cause them to be returned to the county treasurer in the same manner as trustees of common school districts are authorized to return unoccupied and unimproved real estate of non-residents of their districts for unpaid taxes assessed thereon. Said county treasurer shall pay to said board the amount of such taxes out of any moneys in the county treasury not otherwise specifically appropriated, and such proceedings in all respects shall thereupon be had in relation to such taxes and lands as required by law in relation to such lands when so returned by trustees of common school districts.

§ 24. The said board of education may permit children of persons not resident within said union district to attend any school in said union district on such terms as they may prescribe; and said board may in their corporate name sue for and recover of the persons liable therefor all such sums as shall be so prescribed, with costs of suit.

§ 25. The said board of education are hereby authorized to obtain by loan the whole or any part of the moneys required to be expended by them in section fifteen of this act, and to repay the same, with interest, when collected by tax under the provisions of section seventeen of this act. All the moneys authorized to be raised or loaned by this act for the purposes of said section shall not exceed the sum of ten thousand dollars, exclusive of interest.

§ 26. The said board of education are hereby authorized to raise by tax, according to the provisions of said section seventeen, the annual interest of the above mentioned loan or loans, and to pay over the same in discharge of such interest, and also in each year in which an installment of said loan or loans shall become due, a sum equal to that installment, and to pay over the same in discharge thereof.

§ 27. The taxes imposed by the provisions of this act shall be a lien upon the lands taxed, to be enforced and collected by sale in the manner that county taxes are, upon a return to be made by the collector to the treasurer of the county of all unpaid taxes in said district.

§ 28. Whenever any officer of the said union district, or of the said board of education, shall have paid any moneys in or about the prosecution or defense of any suit commenced by or against him, in the discharge of the duties of his office, or for acts done by color thereof, it shall be the duty of the said board of education, unless it shall appear to them that the same were paid in consequence of the willful neglect or misconduct of the claimant, to ascertain the amount thereof by the best means in their power, and to cause the same to be assessed upon and collected of the taxable inhabitants of said district, in addition to the sums authorized to be raised for school purposes in said district by this act; and when so collected to pay over the same to the person entitled thereto by virtue of this act.

§ 29. The provisions of sections twenty-two, twenty-three, twenty-four, twenty-five and twenty-eight, of chapter one hundred and twenty-nine, and of section three, chapter one hundred and eighty, Laws of eighteen hundred and fifty-six, shall apply to and form a part of this act.

PHELPS.

[*Laws of 1855, chap. 553.*]

SECTION 1. The inhabitants of school district number eight, in the town of Phelps, county of Ontario, shall, at the next election of a trustee of said district, and at such election every third year thereafter, elect two additional trustees thereof, making the whole number of trustees thereof five. The two additional trustees shall respectively hold their offices for three years, and until others are elected in their respective places.

§ 2. The trustees of said district shall have authority to make regulations respecting the attendance of the children of the district in the departments thereof, the transfer of them from one department to another, and the instruction and studies to be given and pursued in the departments thereof.

§ 3. The said trustees and their successors in office are hereby created a body corporate, by the name of "Phelps union and classical school," and empowered to establish and organize a classical school by that name in said district and village of Phelps; which school shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies, and to share in the distribution of the moneys of the literature fund of this State, as the academies thereof; provided, however, that this act shall not affect the rights and duties of said trustees and district under the statutes of this State relating to common schools.

[*Chap. 54, Laws of 1865, p. 79.*]

SECTION 1. The trustees of school district number eight, of the town of Phelps, in Ontario county, shall not, hereafter, collect or receive any fees or compensation for instruction in the school under the charge of said trustees of said district, of pupils whose parents or guardians reside within the territory embraced in said district. The charges for tuition of all other pupils admitted into said school shall be regulated by the board of trustees thereof, from time to time as they shall deem proper.

§ 2. Any sums necessary for the payment of teachers' wages, after applying to that purpose any moneys or income in the hands or under the control of the said board of trustees, applicable thereto, shall be levied and collected upon the taxable property of said district, as other taxes are now or may hereafter be required by law to be levied and collected, and such sums may be levied and collected for the year in advance, or otherwise, as may be deemed advisable.

PITTS TOWN.

[*Chap. 151, Laws of 1866, p. 297.*]

SECTION 1. School district number sixteen in the town of Pittstown, county of Rensselaer, shall hereafter be a free school district (not subject to alteration, except as hereinafter provided); and all expenses for teachers' wages over and above the public school moneys which shall be applicable thereto, shall be levied by the trustees and collected as are other school district taxes; and any tax list therefor may, without a vote of the district, be made out by the trustees at such times as they shall deem proper, not exceeding thirty days before the said wages may become due.

§ 2. The trustees are hereby authorized and required to finish, or cause to be finished, the new school in said district, now partially completed, and to furnish the same with suitable furniture, to erect proper and convenient out-buildings, fence the school-house site with a good and substantial fence, to grade said site, and to plant therein trees and shrubbery; the whole to be done at an expense not exceeding twelve hundred dollars, which sum, or so much thereof as may be deemed necessary by the trustees for the purposes named, and to pay for any other expense already incurred by them in the erection and preparation of the said school-house, over and above the moneys otherwise provided for the purpose, they are authorized to levy upon the taxable property of the district, and to cause the same to be collected.

§ 3. With the written consent of the supervisor of the said town of Pittstown, and the written consent of the supervisor of the town of Schaghticoke, the school commissioner of the first commissioner district in the county of Rensselaer is hereby authorized to annex to said school district number sixteen, such territory, from adjoining districts, as he shall deem just to the inhabitants annexed and conducive to the convenience and education of the children of school age residing therein.

§ 4. All contracts and acts heretofore made and performed by the said trustees in and for the purchase of the site upon which the new school-house stands, for the erection of the new school-house, and for materials and labor furnished therefor, are hereby ratified and confirmed, but nothing in this act contained shall in any manner affect any suit or proceeding now pending.

## PLATTSBURGH, DISTRICTS Nos. 1, 2 AND 5.

[Chap. 810, Laws of 1867, p. 2026, vol. 2.]

SECTION 1. All that contiguous territory comprised in school districts numbers one, two and five, in the town of Plattsburgh, is hereby consolidated into one school district, under the name and description of free union school district number one, of the town of Plattsburgh (it being the village of Plattsburgh and some additional territory); and hereafter all the schools therein, including the academy, shall be under the superintendence, care, management and control of one board of education and its successors, to be constituted and organized as hereinafter provided.

§ 2. Except as modified by this act, so much of title nine of chapter five hundred and fifty-five, of the Laws of one thousand eight hundred and sixty-four, as relates to school districts, other than those whose limits correspond with the limits of any city or incorporated village, is hereby extended and made applicable to free union school district number one aforesaid; and the board of education therefor, as provided in section seven of said title nine, shall be and is hereby as thereby created a body corporate, and, except as qualified by this act, shall have and possess all the powers conferred upon such boards in such districts, in and by the said title nine. And it shall be the duty of the said board to exercise these powers thus qualified, together with any additional powers and duties conferred or imposed by this act.

§ 3. Whenever the existing trustees of the academy of Plattsburgh shall signify their assent thereto, it shall be the duty of the said board of education forthwith to establish an academical department of the said union free school district in the said academy; but nothing in this act contained shall be deemed or held to affect or impair the separate corporate existence and continuance of the said academy, or any rights or privileges appertaining to it as such, except as herein expressly provided; and the said board of education shall succeed to, have, possess and execute all the duties and powers had or possessed by or incumbent upon the board of trustees of the said academy to do or perform, touching the said academy as a corporate body, the real and personal estate thereof, its fiscal concerns, and the duties required to be performed by the rules and regulations of the Regents of the University, and to which said academy shall remain subject in its course of education, and all matters pertaining thereto. And the said board of education shall become, on the organization thereof, the acting trustees of the said academy, charged with all the duties and powers of the former trustees (except as herein provided), and all the powers and duties conferred by this act, and the said title nine of the act of one thousand eight hundred and sixty-four, as modified by this act; and to enable said board fully to execute said trust, the legal title to the academy lot, the structures thereon, and to all the personal property belonging to the said academy as a corporation, and the care and custody of all existing records and papers of the said board of trustees of the academy, shall pass and vest in the said board of education on the organization thereof, in trust as aforesaid. The president, secretary, treasurer, collector and other officers of the board of education, shall hold the same positions respectively in the board of acting trustees of the academy, and a separate record shall be kept of all matters relating to the separate existence of said academy.

§ 4. It shall be the especial duty of the said board of education to keep the said academy open, and in operation as an academy, four quarters every year; and the contingent expenses arising therefrom, including necessary furniture, apparatus, additions to library, proper instruments, fuel, lighting, necessary repairs, cleansing and the disbursements of the board of education in the execution of their duties, and the wages of a janitor to be employed by the board for the academy, and the wages of teachers therein, so far as not hereinafter otherwise provided for, shall be cared for by the said board of education, and the requisite funds therefor be supplied by the said free union school district, in the manner provided in section ten of the said title nine, in respect to any money thereby allowed to be raised and collected for any of the purposes therein expressed; and in default thereof, then the said board of education shall collect the said requisite funds as they may collect funds for similar objects in and by section seventeen of said title nine, or acts amendatory thereof.

§ 5. The said district schools shall be free only to those persons residing in the district, authorized to be enumerated and reported with those forming the basis for the apportionment of public money to said district; against all others, whether from within or from without the limits of the said district, attending said schools, just and remunerative rates of tuition shall be charged and paid. And against all from without the district or from within, and being over twenty-one years of age, attending the academy, the rates of tuition shall also be fully remunerative, but against all those from within the district under twenty-one years of age, the rates of tuition shall be so adjusted as to be compensatory for tuition, as far as may be, and at the same time keep the said academy in operation up to its capacity, and any deficiency of means to pay the teachers therein, after applying moneys derived from other sources, shall be charged over upon the district, and be raised and collected as moneys are allowed or directed to be raised and collected by section ten, or section seventeen of said title nine, and said sections are extended and made applicable to any such deficiency and to the powers of the districts, and of the board of education in respect thereto.

§ 6. The qualified voters of the said free union school district shall have power, upon the recommendation of the said board of education, to vote such other taxes additional to those to be supplied as contingent expenses hereinbefore named, as the majority may by resolution approve, for the purchase of additions to the site of the academy buildings, or additions to those structures, or any of them, or improvements thereof, and for the erection of new structures, and for supplying the proper fixtures, furnishing, furniture, library, apparatus

and instruments therefor, and may direct the same to be collected in one sum or by installments, and the said board of education shall cause all such resolutions to be fully executed in the manner and with the means specified in said title nine, in respect to like objects.

§ 7. The said board of education shall be constituted and composed of five trustees, selected from the existing board of trustees of the Plattsburgh academy, associated with five trustees of the free union school district, to be elected by the qualified voters of the district.

§ 8. Upon the passage of this act, the board of trustees of said Plattsburgh academy shall elect five of its members, who shall be residents of said village school district, to be associated with the five school district trustees, to form the said board of education. The said academy trustees so elected by the said board, shall determine by lot their respective terms of office, so that one shall serve until one year from the second Tuesday of October next, one two years, one three years, one four years and one five years, after the said second Tuesday of October next. After such first election, the trustees of the Plattsburgh academy, shall, on the second Tuesday of October, in every year after the year one thousand eight hundred and sixty-seven, or on such other day as shall be prescribed by law for the annual meeting of said district, elect one of their number to supply the place of a trustee in the board of education, whose term of office shall then expire; and they shall at all times supply vacancies occurring from other cause, in the five so elected from time to time by said board of trustees of said Plattsburgh academy; and on the first Tuesday of May next, after the passage of this act, at seven o'clock in the afternoon, the legal voters of the said consolidated district qualified to vote for school district trustee, shall assemble at the town-hall in the village of Plattsburgh, and organize the school district meeting by appointing a moderator to preside at said meeting, and a clerk to keep the minutes of its proceedings, and shall then proceed to elect by ballot five trustees in the manner prescribed by law for the election of trustees of school districts. Each trustee shall be elected by a separate ballot, and at least one trustee shall be located in each district at the time of his election. The said trustees so elected shall determine by lot their respective terms of office, so that one shall serve until the second Tuesday in October, A. D. eighteen hundred and sixty-eight, or for one year, one for two years, one for three years, and one for four years thereafter, and there shall be elected at every annual meeting on the second Tuesday of October, in and after the year A. D. eighteen hundred and sixty-eight, one trustee to supply the place of the trustee whose term of office shall thus expire; and said five so elected shall, from time to time, fill, by appointment, any and all vacancies that may occur in their number, and the person so appointed shall hold his office until the next annual meeting, when such vacancy shall be filled by election. The elections from the board of the academy, and of the school district trustees at the district meeting thus to be had, shall be duly respectively certified by the board and by the officers of the meeting, and filed with the said board of education on its organization, and with the town clerk of the town of Plattsburgh, the school commissioner of the district and the Superintendent of Public Instruction of the State; and the duration of the term of office of each trustee of each class shall also be certified by the five of each class to the town clerk of Plattsburgh, to the said board of education on its organization, and to the said resident commissioner; and on the election and classification of the said ten trustees, they and their successors in office shall constitute the said board of education for the said free union school district number one of the town of Plattsburgh, and they shall forthwith organize as such board.

§ 9. On the organization of the said board of education, the trustees of the Plattsburgh academy, and their successors in office, shall continue as a board of trustees, for the purpose of electing from their number, from time to time, the successors of the said five deputed to form a component part of the board of education aforesaid, and to fill vacancies occurring in said five.

§ 10. On the organization of said board of education, the said board shall succeed to and perform the respective duties of the local trustees of the said three districts in respect to any unexecuted contract or duty, and said three districts shall have continuance under said board for the mere purpose of closing unfinished business, and the office of local trustee shall cease on the due organization of said board of education.

§ 11. Additional territory may be annexed to the school district number one as prescribed by law for alterations in school districts, and, when so enlarged, all the provisions of this act remaining in force shall apply.

## POMFRET.

[Chap. 34, Laws of 1858, p. 55.]

SECTION 1. School district number nine, in the town of Pomfret, county of Chautauqua, shall form a district, and shall not be subject to alteration except in the manner prescribed by law.

§ 2. The said district shall be under the direction of a board, to be styled the "board of education," which board shall consist of six members, and be a body corporate, a majority of whom shall constitute a quorum for the transaction of business. Ebenezer R. Thompson, Samuel Hilliard, Joseph Mileham, James H. Van Buren, Julian T. Williams and Otis E. Tiffany shall compose the first board of education, and shall hold their offices from one to three years, that is to say: two shall go out in each year, in the order in which their names stand recorded in this section.

§ 3. There shall be elected in each year, in said district, two members of said board of education, who shall be residents and taxable inhabitants of said district, and shall hold their offices for three years, or until others are elected in their places. The said election shall take place at the annual meeting of said district, when the taxable inhabitants of said district may deposit their ballots, containing the name of one person designated for the office; the two persons having the greatest number of votes shall be declared elected. No ballot containing more than one name shall be counted; and the said board shall appoint three suitable persons as inspectors of said election, at any time within thirty days next preceding such election.

§ 4. The board of education shall enter on the duties of their office within ten days after being notified of the passage of this act, and the annual meeting of said district shall be held on the first Monday of October in each year.

§ 5. Said board shall have power to fill vacancies occurring in their own body, but the person so appointed shall hold his office only until the next annual meeting of said district, when the vacancy shall be filled by election.

§ 6. The said board may make all necessary by-laws for their own government; they shall have the entire control and management of all the common schools within the said district, and all the property belonging to the same; they shall have and possess within said district all the rights, powers and authority of trustees of school districts, and shall in all respects be subject to the restriction and control of the commissioner of common schools for the district, in the same manner as the common schools in this State are subject. They shall at their first meeting, and at their first meeting after the annual election in each year, appoint one of their number president of said board, who shall preside at the meetings of said board when present; when absent, a president pro tempore shall act in his stead; they shall also appoint at said meeting one of their number secretary, who shall record all the acts and resolutions of the board, also act as clerk of school district; in his absence, a secretary pro tempore shall be appointed to discharge said duties; they shall also appoint a treasurer, collector and librarian of said district, who shall hold their offices respectively one year from their appointment, and until others are appointed in their places, unless sooner removed by said board. Such treasurer and collector shall each within ten days after notice in writing has been received of his appointment, and before entering on the duties of his office, execute and deliver to said board of education a bond in a penalty of twice the amount of the estimated amount of the money coming into his hands, and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and such board of education shall thereupon make an appointment to fill such vacancy. Such treasurer's bonds shall be approved by the county clerk, and a copy thereof deposited in said county clerk's office.

§ 7. The said board of education shall meet for the transaction of business on the first Monday in each month, or on such other day of the week as they shall fix upon for the year, and may adjourn for a shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by the secretary, or any other member of the board, as often as is necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his place of residence, at least twenty-four hours before the hour of said meeting; and if any of said board refuses or neglects to attend any three successive stated meetings of the board, and if no sufficient cause of his non-attendance be shown, the board may declare his office vacant.

§ 8. No member of the board of education, except the secretary, shall receive any pay or compensation for his services, nor shall it be lawful for any member of said board to become a contractor for building or making any improvement or repairs authorized by this act, or be in any manner, directly or indirectly, interested, either as principal, partner or surety in any such contract. All contracts made in violation of this provision shall be absolutely void, and the person so violating shall forfeit the sum of one hundred dollars, which shall be collected by the board for the use of the district.

§ 9. The said board of education may call special meetings of said district whenever they may deem it necessary; they shall give notice of the same, by posting up a written or printed notice thereof, in at least six public places in said district, and by publishing the same in said district, at least two weeks previous to the time fixed for such meeting; which notice shall state the time and place of such meeting, and the purpose for which the same is called; and no business shall be transacted at any such special meeting except that stated in the notice calling the same. One week's notice of the annual meeting shall be given in said newspapers.

§ 10. The title of the school-houses, sites, lots, furniture, books and all other school property in said district, shall be vested in said board of education; and the said board in its corporate capacity may take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest or devise, for the use of common schools in said district.

§ 11. The public schools in said district shall be free to all children residing therein; but the board of education may permit children of persons not resident within said district to attend said schools, on such terms as they may prescribe, and said board shall have power to sue for and recover such prescribed sum. Said board shall require one of their number to visit each school in said district at least once in each week, to render such assistance to the teachers and advice to the pupils as may be necessary.

§ 12. Every resignation of officers, appointed or elected under this act, shall be made to the board of education; and such resignation shall not excuse said officer from the discharge of his duties until accepted by said board.

§ 13. Said board of education shall cause an enumeration of the children between the ages of four and twenty-one years, in said district, and make, once in each year, such a report to



the school commissioner, at the time and in the manner required by law, of trustees of school districts; and any parent, or guardian, or housekeeper refusing to give his or her own name to the person appointed by said board to take such enumeration, and the number of the children between said ages, living in his or her family, shall be liable to a penalty of ten dollars; said penalty to be sued for and recovered by said board, and appropriated to school purposes.

§ 14. The town supervisor shall, upon the written order of the president and secretary of said board, pay to the treasurer of said board, out of money in his hands belonging to said district, such sums as said order may specify, and all moneys to be received shall be paid to the treasurer of said board, who, together with his sureties on his official bond, shall be accountable to said board of education. Said treasurer shall not pay out any moneys except by resolution of said board and upon an order drawn by the president and certified by the secretary to be so drawn in pursuance of such resolution.

§ 15. Said board of education shall have the entire control of the district library, and may make such regulations in regard to the purchase and distribution of books, and management of said library, as they shall deem proper.

§ 16. Said board of education shall have the power, and are hereby directed, to levy and collect by tax, once in each year, upon all the taxable property and inhabitants in said district, as the same shall have been last assessed by the town assessors of the town in which said district is situated, such sums as said board shall estimate to be necessary for the following purposes, viz.:

1. To pay any deficiency in teachers' wages, after paying all the public money appropriated for such purpose;
2. To hire sites, school-houses and rooms for the use of said school district when necessary;
3. To alter, repair and improve the school-houses belonging to said district and their appurtenances;
4. To insure the school-houses and property belonging to said district;
5. To pay all necessary contingent expenses of said school district, and of the board of education;
6. To pay the librarian a salary not to exceed twenty-five dollars per year;
7. To pay the secretary of said board a salary not exceeding fifty dollars per year;
8. Any such sums as shall be authorized by a majority of the taxable inhabitants, at any special meeting of said district, for the purposes specified in section seventeen of this act; and the board shall add to their warrant for collection of taxes, such amount as they shall deem proper for fees for collecting, not exceeding five per cent on the amount to be collected. Said board shall have power to make all warrants for the collection of taxes to be raised by them returnable in sixty or ninety days, at their discretion, and to renew the same whenever it shall become necessary; such warrant to be signed by the president and secretary, pursuant to a resolution of said board. In case it shall appear that the town assessment roll does not include all the taxable property of said district, the property omitted shall be assessed by the said board, in the same mode required by law, and added thereto; and the collector of said school district shall in the collection of any tax authorized by this act, proceed in the same manner, and have all the powers which collectors of town and county taxes now possess.

§ 17. Whenever in the opinion of said board it becomes necessary to procure a site, and build a school-house, to enlarge those already built, or to raise money for any necessary school purpose not enumerated in this act; they shall submit the plans, and the estimated cost of such buildings, site, and necessary appendages, to the taxable inhabitants of said district, at a special meeting called for that purpose; and if a majority of such inhabitants present shall vote in favor of the same, the said board may proceed to carry the same into effect; but no site purchased and house built, after the passage of this act, shall exceed in cost, jointly, the sum of three thousand dollars, nor shall any addition to school-houses in said district exceed said amount; neither shall more than one school-house or addition to any school-house in said district be built in any one year; nor shall any addition be made to any school-house in said district the same year in which a new school-house is built; nor shall a greater sum than four hundred dollars be raised in any one year, for purposes not enumerated in this act, by said special meeting.

§ 18. Said board of education shall have the power to establish as many primary schools in said district as they may deem proper, and to have in all respects the superintendence, supervision and management of the public schools in said district, to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils, and their transfer from one school to another, and generally for their good order, prosperity and public utility.

§ 19. Whenever, in the opinion of said board, it may be advisable to sell or exchange any school-house, lots or sites now or hereafter belonging to the district, they shall state such object in the notice of an annual or special meeting, and, with the consent of a majority of the taxable inhabitants present at such meeting, may sell or dispose of such school-houses, sites or lots, to the best advantage.

§ 20. Said board of education shall, at each annual meeting, submit a report in writing of their doings as such board, and shall state therein the number and condition of the schools in said district under their charge, and the number of scholars attending the same, the studies pursued, the amount of money received from the State and from any other source, the expenditure of the same, and all the particulars in detail relating to schools in said district, which report may, if the board think proper, be printed.

§ 21. All laws and parts of laws, inconsistent with this act, are hereby repealed, so far as relates to school district number nine, in the town of Pomfret.

[*Chap. 98, Laws of 1864, p. 150.*]

SECTION 1. Section five of an act passed March seventeenth, eighteen hundred and fifty-eight, entitled "An act to make school district number nine, in the town of Pomfret, a union free school district," is hereby amended so as to read as follows: Said board of education shall have power to fill all vacancies occurring in their own body for the unexpired term of the person causing such vacancy, and whenever any vacancy shall exist in said board of education a majority of the remaining members shall constitute a quorum of said board.

§ 2. Whenever said board of education shall be authorized, as provided by said act of March seventeen, eighteen hundred and fifty-eight, to levy a tax for purchasing a site, building a school-house, making repairs on school-houses, or for other purposes, it is hereby authorized to borrow said money, or so much thereof as it shall deem proper, and to issue bonds for the same; said bonds not to draw over seven per cent interest, and to be made payable at such places and times as in the judgment of said board shall be to the best advantage of said district; and the taxable inhabitants at any special school meeting, as provided in said act of eighteen hundred and fifty-eight, are hereby authorized to vote to raise such sum or sums for the building of school-houses or additions to those already built, or both, or repairs of the same, as they shall deem proper.

§ 3. The acts of said board of education heretofore done in regard to borrowing money for the purpose of building a new school-house, for the levying of taxes and paying out money, are hereby legalized, and the terms of office of the following persons constituting the present members of said board of education shall expire as follows: Cyrus Thompson and H. F. Clark, on the second Tuesday of October, eighteen hundred and sixty-four; William Bookstaver and James H. Van Buren, on the second Tuesday of October, eighteen hundred and sixty-five; J. T. Williams and Joseph Milcham on the second Tuesday of October, eighteen hundred and sixty-six. Whenever, at the annual meeting of the district for the election of two members of said board, a tie shall occur between any two of the three receiving the highest number of votes, no choice shall be deemed to have been made by said meeting, and the outgoing members shall hold over and act as members of said board until their places shall be filled by said board of education, which said board is hereby authorized to do.

#### CITY OF POUGHKEEPSIE.

[*Laws of 1854, chap. 90, as amended by chap. 193, Laws of 1860, p. 317, and chap. 527, Laws of 1866, p. 1134.*]

#### TITLE X.—OF SCHOOLS AND THE BOARD OF EDUCATION.

SECTION 1. There shall be elected in said city at every annual election four commissioners of schools, who shall hold their office for three years. At the first elections to be held under this act, twelve commissioners shall be chosen; and at the first meeting of the board of education, hereby constituted, after such election, the said commissioners shall draw lots for their terms of office, so that four shall draw to hold for one, four for two, and four for three years, and their respective terms of office shall expire accordingly.

§ 2. In case of vacancy in the office of any such commissioners, or in case no person shall be elected thereto by reason of two or more persons having an equal number of votes, the common council shall appoint an inhabitant of the city to fill the same, and the person appointed shall hold his office until the next election of commissioners of common schools.

§ 3. The said commissioners shall meet on the Tuesday next after the annual election and organize as a board of education; they shall elect one of their number to be president, who shall possess the powers and discharge the duties of a town superintendent of schools, so far as the same may be necessary, and not inconsistent with this act; they may employ a clerk at a reasonable compensation, and a librarian to have the charge of the public library, who shall be paid a reasonable salary out of the school funds of the city. They shall have the charge and control of the public schools in the city of Poughkeepsie, and shall exercise the powers and discharge the duties, in respect to said schools, both of trustees of school district and of town superintendent under the statutes of this State; they shall also have charge and control of the district school library, which shall be hereafter known as the city library of Poughkeepsie, and may make all necessary and proper regulations concerning the same; and they may appropriate for the benefit of said library, out of the moneys annually raised in said city by the school tax, an amount not exceeding one hundred and fifty dollars in addition to the library money received from the State.

§ 4. It shall be the duty of the board of education to make to the common council of the city of Poughkeepsie an annual report, on or before the first Tuesday in February of each year, setting forth the number and condition of each school under their charge, a detail of all the expenses and liabilities incurred, with all disbursements made by them during the past year, and all other particulars relating to the schools. In their annual report, the said board of education shall determine and certify the amount of money which, when added to the money annually apportioned to the said corporation out of the funds belonging to the State, will in their judgment be necessary to support all the schools under their superintendence for the then current year. The said amount shall in no case exceed three times the amount which shall have been apportioned out of the funds belonging to the State, as aforesaid, for the year next preceding. The said council shall cause said report of the board of education, with a statement of the city chamberlain, showing the amount received by him

during the same year for the support of schools from all sources and the disbursement or expenditure thereof, to be published once in every newspaper printed in said city.

§ 5. If such amount so certified shall not exceed ten thousand dollars, the council of said city shall have power to levy and collect the same, or any less amount which they may deem proper, at the same time and in the same manner as other general city taxes are levied and raised; and a separate column shall be provided in the general tax roll of said city, in which shall be inserted the amount of tax assessed for the support of public schools.

§ 6. If the said board of education shall at any time recommend the raising of more than ten thousand dollars in any year for the support of schools, the said council shall submit the question, whether the excess above ten thousand dollars shall be raised, to the electors of said city being tax payers entitled to vote at special tax elections, according to the provisions of this act at an election to be held in the same manner in which special taxes are directed to be submitted to said electors according to the provisions of the act. If the majority of the votes cast at such special election shall be given in favor of raising the amount recommended by the board of education, the same shall be levied and collected in the manner prescribed by this act for school taxes. If a majority of such votes shall be given against raising such amount, the said council shall proceed to raise ten thousand dollars, in the manner provided in this act for the support of schools.

§ 7. If the board of education shall deem the purchase or erection of an additional school-house proper or necessary, they may recommend the same in their annual report, or in a special report adopted at a regular meeting of said board, by two-thirds of the members of said board concurring, stating the location they propose, the cost of a lot, and a plan and estimate for a building. The council of said city may thereupon, without unnecessary delay, submit the question of the purchase or erection of such school-house to the electors, being tax payers entitled to vote special taxes under this act, at an election to be held in the manner provided by this act in voting special taxes. The said electors shall vote by ballots, on which shall be written or printed, "For a school-house," "Against a school-house;" if a majority of the votes shall be cast for a school-house, and not otherwise, it shall be the duty of the common council to certify to the board of education the result of such election, and the said board of education are hereby empowered and shall forthwith proceed to purchase a lot and erect a building, or purchase a lot and building suitable for a school-house, in such location as to said board of education shall seem best. The title to such lot shall be taken to and shall vest in the city of Poughkeepsie; and the cost of building and furnishing such school-house shall in no case exceed the sum of six thousand dollars, inclusive of the lot; and the expense thereof, including the lot, shall be defrayed by a general tax, which the council shall levy and collect in the same manner as other school taxes are levied and collected; or if said council shall deem best, such money may be raised by loan, on the credit of the city, which the said mayor and council are hereby authorized to pledge for such purpose, in the same manner as is by this act provided in relation to loans by said city; said loan to be paid in annual installments, with interest, within the period of twenty years, for which time said council shall have power, and are hereby authorized to pledge the credit of said city, or for such less time as to the said council shall seem proper; and the installments, with interest, shall be levied and collected, together with the annual taxes, as the said installments become due. *[As amended by section 3, of chapter 193, Laws of 1866.]*

§ 8. The chamberlain of the city of Poughkeepsie is hereby designated as the person to receive all public money which said city or the schools therein are or shall be entitled to receive from the State, or by tax or loan from the city, and the said chamberlain shall pay all school moneys to the president of the board of education, upon his executing and filing with said chamberlain a bond to the city of Poughkeepsie, in such sums as the council shall direct, and with such sureties as the mayor shall approve, conditioned that he will faithfully discharge the duties of his trust, and pay over or account for all moneys received by him for school purposes; and all moneys so received by said president shall be deposited in one of the banks of said city to the credit of the president of the board of education, and shall be paid out by him upon resolutions of said board, certified by the clerk, by draft or check, containing the name of the person to whom paid and the date of the meeting when the resolution directing the payment of the same was passed by said board, and signed by the presiding officer of said board, and not otherwise.

§ 9. The board of education shall cause an enumeration of all the children within said city, between the ages of four and twenty-one years of age, to be made annually by or before the first day of July in every year, and the president of said board shall report the number of such children at the time and in the manner required by law of town superintendents of schools. *[The residue of this section is repealed by chap. 180 of 1866.]*

§ 10. The said board may establish, and cause to be kept, a separate school for the instruction of colored children.

§ 11. The services of the board of education designated by this act shall be gratuitous, except that the president shall receive ten dollars for making the report and performing such other duties as are by this act directed to be performed by him as a town superintendent of schools. Any person elected a member of this board who shall refuse to qualify and serve or to perform the duties of his office, shall forfeit and pay ten dollars, to be recovered in a proper action to be brought for the same by the city, and the money to be applied to the benefit of the city library, under the direction of the board of education.

§ 12. If any person elected a commissioner of schools shall resign his office after having duly qualified, such resignation shall not be accepted by the common council, to whom all such resignations shall be made, unless the person desiring to resign shall pay to the city chamberlain the sum of ten dollars, which shall be applied for the benefit of the city library by the board of education.

§ 13. The said board may make regulations respecting the use, and imposing fines or penalties for the abuse of books belonging to the city library; and any person incurring any such fine or penalty shall be liable to an action for the same by the city, and the amount received shall be applied as aforesaid to the use of the library.

§ 14. The title to all property, real or personal, now held by the board of education of the village of Poughkeepsie is hereby vested in and confirmed to the city of Poughkeepsie hereby incorporated.

[By section 6, chapter 316 of 1852, the children instructed in the schools of the Poughkeepsie female guardian society are to participate in the apportionment of the school fund according to the average number in attendance.]

## PULASKI.

[*Laws of 1853, chap. 305, as amended by chap. 567, Laws of 1855.*]

SECTION 1. All that part of school districts numbers twenty-five, seven and thirty, lying within the village of Pulaski, and the parts of the districts adjacent thereto, lying within the boundaries of said village, are hereby consolidated, and shall hereafter form but one school district, to be called "the Pulaski school district," provided that the consolidation of said districts and parts of districts into one district shall not interfere with the rights, privileges and duties of the trustees of the said respective districts and parts of districts in relation to the past winter terms of said schools respectively; but for the purpose of closing said terms and collecting and paying teachers' wages and all other charges relating thereto, or any other arrearages or debts, their powers and duties shall remain and continue as if this act had not passed.

§ 2. Charles H. Cross, Hiram Murdock, Anson R. Jones, George Garley, Don A. King, Anson Malby, Newton M. Wardwell, Samuel Woodruff and William H. Lester are hereby appointed trustees of said district, to be divided by lot, at their first meeting, into three classes, to be numbered one, two and three, to hold their offices as follows: Class number one until the next annual meeting, which shall be held on the first Tuesday of October next, at which there shall be elected three trustees to supply their place; class number two until the next annual meeting thereafter; and class number three until the next annual meeting thereafter; and at each annual meeting there shall be elected three trustees to supply the place of those whose terms shall then expire. If at any meeting so annually held there shall be a failure to elect said trustees, the class whose term would then expire shall hold until others are duly elected in their stead. Notice of the annual or any special district meeting may hereafter be given by posting the same in three public places in said village, and also publishing in the newspaper printed in said village, if any shall be published therein, and the same shall be deemed a valid and sufficient notice for all purposes.

§ 3. The trustees of said district and their successors in office shall constitute a board of education for said district, and, for the purposes of this act, in addition to the present powers and duties of trustees, are hereby constituted a body politic and corporate, by the name and style of "the board of education of the village of Pulaski;" and said corporation shall have power to establish and organize a classical school in said village, to be known by the name of "the Pulaski academy;" and such classical school shall be subject to all laws and regulations applicable to other incorporated academies of this State, and shall be entitled to share in the distribution of the moneys of the literature fund upon the same terms as other academies of this State; and the Regents of the University shall recognize said academy as such as soon as the required sum of money shall be expended in buildings and competent teachers employed therein.

§ 4. Such board of education shall appoint one of their number president of said board, who shall preside at the meetings of said board when present; when absent a president pro tempore shall be appointed in his stead. They shall also appoint one of their number secretary, who shall record all the acts, doings and resolutions of said board, and, in the absence of the secretary, a secretary pro tempore shall be appointed to discharge such duties. They shall also appoint a collector, librarian and treasurer of said district, who shall respectively hold their offices one year from their appointment and until others are appointed in their places, unless sooner removed by said board; such collector, librarian and treasurer shall each, within ten days after notice of their appointment in writing, and before the entering upon the duties of their office, execute and deliver to said board of education a bond, in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office; in case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and said board shall thereupon make an appointment to supply such vacancy.

§ 5. The said board of education shall have power to fill any vacancy which may happen by the reason of death or the removal from the said district, or otherwise, and the officer so appointed shall hold his office for the unexpired time of the person to supply whose place he shall be so appointed.

§ 6. Said board of education shall possess all the powers and be subject to all the duties, in respect to said district, that the trustees of common schools now possess or are subject to, and such other powers and duties as are given or imposed by this act, in addition to the powers now vested in them by law.

§ 7. The taxable inhabitants of said district, at any annual, special or adjourned district meeting, legally held, may vote to raise such sum of money as they shall deem expedient, not exceeding nine thousand dollars, for the purpose of purchasing a site, and building a school-house or school-houses in said district, or for the purpose of purchasing any suitable

building for such purpose, and furnishing the same with the necessary furniture, maps, globes and other suitable apparatus, and direct the trustees to cause the same to be levied and raised, by tax upon the real and personal estate within the bounds of said district which shall be liable to taxation for the ordinary taxes of said village or for town and county charges, by installments, and make out a tax for the collection of the same as often as such installments shall become due: and the legal voters at any such meeting are authorized to fix the compensation for collecting and paying over to the treasurer of said board the amount so levied. They shall have power also in like manner to raise such sum or sums as shall be deemed necessary for the payment of teachers' wages or the general purposes of education in said village. *[As amended by § 1, chapter 567 of 1855.]*

§ 2. The inhabitants of the town of Richland are hereby authorized to raise by tax on the said town, in the same manner as other town taxes are levied and collected, a sum not exceeding four thousand dollars by annual installments or other to be determined by said inhabitants at any town meeting legally assembled, and the same, when so raised and collected, shall be paid to the treasurer of the board of education in said village, to be expended by said board for the purposes mentioned in the first section of this act. *[Section 2, chapter 567 of 1855. The section referred to is the preceding.]*

§ 3. The board of education are hereby authorized to obtain by loan the whole or any part of the money, legally voted by said district, for the purchase of a site and the erection of buildings, and secure the payment of the same by their official bond.

§ 4. The said board of education are hereby authorized and empowered to sell at public auction to the highest bidder, or at private sale, the school-houses and sites thereof belonging to or situated in said district, the title to all of which is hereby vested in them, and hold and use the proceeds therefor for the benefit of said district.

§ 5. The said board of education are hereby empowered and authorized to make such by-laws and regulations as they may deem necessary to secure the prosperity, order and government of said school, and to divide the same into primary and higher departments, and regulate the transfer of scholars from one department to the other, and provide suitable instructors for each department; direct what text books shall be used in the same; to establish such primary or infant school or schools as they shall deem requisite and expedient, and to alter and discontinue the same; to purchase or hire school-houses, rooms, lots or sites for school-houses, and to fence and improve the same as they may think proper; to purchase, exchange, improve and repair school apparatus, books, furniture and appendages; to purchase fuel and all other necessities for the use of the school or schools in said district, and to pay the contingent expenses thereof; to pay the wages of all teachers employed in the school or schools in said district out of the public money and funds applicable thereto; to fix and regulate the terms of tuition fees in said primary and other higher branches in said school or schools; to sue for and collect in their corporate name any sum of money or tuition fees due to said district; and all contracts made by them in their official capacity shall be binding upon them and their successors in office; to receive and apply to the use of said school or schools, or any department thereof, any gift, legacy, bequest or annuities given or bequeathed to said board, and to apply the same according to the instruction of the donor or testator; to take and hold any real estate given or bequeathed to said board for the purpose of said school or schools, or any department thereof, and apply the proceeds thereof according to the terms and instructions of the donor or testator; to have in all respects the supervision, management and control of said school or schools, and any and every department thereof, and hire, pay and discharge any teacher or teachers employed by them in said school or schools or department thereof.

§ 6. The report now required by law to be made to the town superintendents of common schools shall be made by said board of education, and the public moneys payable to said district shall be payable by him to the treasurer thereof.

§ 7. Said board of education shall have power and are hereby authorized to receive into said academy, and cause to be instructed therein, any pupil or pupils residing in or out of said district, and to regulate and establish the terms of tuition fees of such resident or non-resident pupils, and said board of education shall have power to regulate the tuition fees and rates of charges for instruction, and to graduate the same according to the branches pursued in the higher English and classical departments of said academy. *[As amended by chapter 159, Laws of 1864, p. 336.]*

§ 8. After applying the public moneys applicable thereto to the support of said school or schools in said districts, in payment of the salaries and wages of teachers employed therein, said board of education shall, unless the same shall have been previously raised, cause such additional sum as may be required, to pay said wages and salaries of teachers and other contingent expenses necessary to the support of such academy and school or schools, to be assessed and levied upon the taxable property of said district, and collected in the manner provided by law for the collection and assessment of school district taxes in the several towns of this State; not more than two taxes for such purpose shall ever be raised in one year; warrants for the collection of taxes in said district to be issued under the hand and seal of the president or the major part of said board.

§ 9. All moneys raised in said district for the purpose of said school or schools, and all moneys to be received by such district from the common school fund or other source, shall be paid to the treasurer of said district, to be paid by him on the warrant of said board of education, and to be applied by them for the use of said school or schools, according to the provisions of this act.

§ 10. The libraries of said districts number twenty-five, seven and thirty are hereby consolidated into one, and the title thereto vested in said board of education, as trustees of said district; and the library money payable to said district shall be paid to the treasurer thereof, and drawn on the warrant of and expended by said board for the use of said trustees.

## ROCHESTER.

[Title six of chap. 143, Laws of 1861, p. 264, as amended by chap. 121, Laws of 1863, p. 181; by chap. 282, Laws of 1864, p. 695, and by chap. 553, Laws of 1865, p. 1085.]

[By sections six and seven, of title two, one commissioner of common schools is required to be annually elected in each ward on the Tuesday after the first Monday in March.

By section twenty-four, in case a vacancy shall occur in the office, "the common council may, in their discretion, fill such vacancy by the appointment of a suitable person who is an elector, and if appointed for a ward, who is a resident of the ward for which he shall be appointed; and any officer appointed to fill a vacancy, if the office is elective, shall hold, by virtue of such appointment, only until the first Monday of April next succeeding. If an elective officer, whose office shall have become vacant, was one of a class, a successor for the unexpired term shall be elected at the next annual election."

By section twenty-six, every person so elected or appointed to the office of commissioner shall, before he enters on the duties of his office, and within five days after being notified of such election or appointment, take the oath of office prescribed by the Constitution of this State, before some officer authorized to take affidavits to be read in courts of justice, and file the same with the clerk of the city; and by section twenty-eight, his neglect to do so, or, if required by the common council to execute an official bond or undertaking, the neglect to execute and file the same in manner and within the time prescribed by the common council, shall be deemed a refusal to serve.]

## TITLE VI.—SCHOOLS AND BOARD OF EDUCATION.

§ 134. The several wards of the city of Rochester shall constitute one school district, for all purposes except as herein otherwise provided, and the schools therein shall be free to all children between the ages of five and twenty-one residing in such wards.

§ 135. The title of school-houses, sites, lots, furniture, books, apparatus and appurtenances, and all other school property in this act mentioned, shall remain and continue to be in the said city of Rochester.

§ 136. The common council of said city may, upon the recommendation of the board of education hereinafter mentioned, sell any of the school-houses, lots or sites, or any other school property now or hereafter belonging to said city, upon such terms as the said common council may deem reasonable. The proceeds of all such sales shall be paid to the treasurer of the city, and shall be by the common council again expended in the purchase, repairs or improvements of other school-houses, lots, sites or school furniture, apparatus or appurtenances.

§ 137. The commissioners of common schools in said city shall constitute a board to be styled the "board of education of the city of Rochester," which shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of this act; they shall meet on the first Monday of each and every month, and as much oftener as they shall from time to time appoint; a majority of the said board shall constitute a quorum for the transaction of business. The said board shall appoint one of their number president, who shall, when present, preside at all the meetings of said board, and shall have power to call special meetings of the board, in the manner described by this act for the calling of special meetings of the common council. In the absence of the president, the board shall appoint some other member to preside at such meetings and perform the duties of the president. No member of said board of education shall, during the period for which he was elected, be appointed to or be competent to hold any office of which the emoluments are paid from the city treasury, or paid by fees directed to be paid by any act or ordinance of the board of education, or be directly or indirectly interested in any contract, as principal, surety or otherwise, the expenses or consideration whereof are to be paid under any ordinance of the board of education.

§ 138. The said commissioners shall appoint a city superintendent of common schools, who shall hold his office during the pleasure of the board, and whose compensation shall be fixed by the said board, and whose duties shall be prescribed by said board; the superintendent shall officiate as clerk of the board, and shall keep a record of the proceedings of the board. The said record, or a transcript thereof certified by the president and clerk, shall be received in all courts as *prima facie* evidence of the facts therein set forth; and such records, and all the books, accounts, vouchers and papers of said board, shall at all times be subject to the inspection of the common council and of any committee thereof.

§ 139. The said commissioners may appoint a policeman who shall hold his office during the pleasure of said board, and whose salary shall be fixed and paid by the common council, who shall have the same powers as the other policemen of said city, and who shall perform such duties as said board may impose.

§ 140. The common council of said city shall have the power, and it shall be their duty, to raise from time to time, by tax to be levied equally upon all the real and personal estate in said city which shall be liable to taxation for the ordinary city taxes or for city or county charges, such sum or sums of money as may be necessary or proper for any or all the following purposes:

1. To purchase, lease or improve sites for school-houses;
2. To build, purchase, lease, enlarge, improve, alter and repair school-houses and their out-houses and appurtenances;
3. To purchase, improve, exchange and repair school-apparatus, books, furniture and appendages;

4. To procure fuel and defray the contingent expenses of the common schools ;  
 5. To pay the wages of teachers due after the application of the public moneys which may by law be appropriated and provided for that purpose ; provided, nevertheless, that the tax to be levied as aforesaid and collected by virtue of this act shall be collected at the same time and in the same manner as other city taxes ;

6. And the amount to be raised for teachers' wages and contingent expenses, in any one year, shall not be less than one dollar nor more than three dollars for every scholar over the age of five years and under the age of sixteen years within said city, according to the annual enumeration of the previous year. Nor shall the amount to be raised in any one year to lease, alter, improve and repair school-houses and their outhouses and appurtenances, exceed five thousand dollars. Nor shall the amount to be raised in any one year to purchase and improve sites, and build or enlarge school-houses, exceed ten thousand dollars ; and the common council of said city are authorized and directed, when necessary, to raise by loan, in anticipation of the taxes, the moneys so to be raised, collected and levied as aforesaid.

§ 141. All moneys to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to or provided for said city, shall be paid to the city treasurer thereof, who, together with their sureties upon his official bond, shall be accountable therefor in the same manner as for other moneys of said city. The said city treasurer shall be liable to the same penalties for any official misconduct, in relation to the said moneys, as for any similar misconduct in relation to other moneys of said city.

§ 142. The said " board " shall have power, and it shall be their duty :

1. To establish and organize in the several wards of said city such and so many schools (including the common schools now existing therein) as they shall deem requisite and expedient, and to alter and discontinue the same ;

2. To hire school-houses and rooms, and improve them as they may deem proper ;

3. To alter, enlarge, and improve and repair school-houses and appurtenances, as they may deem advisable ;

4. To purchase, exchange, improve and repair school apparatus, furniture and appendages, and to defray their contingent expenses ;

5. To have the custody and safe keeping of the school-houses, outhouses, fences, books, furniture and appendages, and to see that the ordinances of the common council in relation thereto be observed ;

6. To contract with, license and employ all teachers in said schools, and at their pleasure to remove them ;

7. To pay the wages of such teachers out of the moneys appropriated and provided by law for the support of schools in said city, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised for that purpose, by section one hundred and forty of this act, by tax upon said city ;

8. To defray the necessary contingent expenses of the board, including an annual salary to the superintendent ;

9. To have in all respects the superintendence, supervision and management of the common schools in said city, and from time to time to adopt, alter, modify and repeal as they may deem expedient, rules and regulations for their organization, government, visitation and instruction, for the reception of pupils and their transfer from one school to another, and generally for the promotion of their good order, prosperity and public utility ;

10. Whenever in the opinion of the board it may be advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the city, to report the same to the common council ;

11. To prepare and report to the common council such ordinances and regulations as may be necessary or proper for the protection, safe keeping, care and preservation of school-houses, lots and sites, and appurtenances, and all the property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations ; and, annually, on or before the first day of June on each year, to determine and certify to said common council the sums in their opinion necessary or proper to be raised under the one hundred and fortieth section of this act, specifying the sums required (for the year commencing on the first day of January thereafter), for each of the purposes therein mentioned and the reasons therefor ;

12. On or before the second Tuesday of October, in each year, to make and file with the county clerk, or such other officers as may be designated by law, a report in writing, bearing date the first day of October in that year and stating :

I. The number of school-houses in said city, and an account and description of all the common schools kept in said city during the preceding year and the time they have severally been taught ;

II. The number of children taught in said schools respectively, and the number of children over the age of five years and under the age of twenty-one years residing in said city on the last day of December previous ;

III. The whole amount of school moneys received by the city treasurer of said city during the year preceding, distinguishing the amount received from the county treasurer from the city tax, and from any other source ;

IV. The manner in which such moneys had been expended, and whether any and what part remains unexpended, and for what cause ;

V. The amount of money received for tuition fees from foreign pupils during the year, and the amount paid for teachers' wages, in addition to the public moneys, with such other information relating to the common schools of said city as may from time to time be required by the State Superintendent of Common Schools.

§ 143. The said board of education shall have power to allow the children of persons not resident within the city to attend any of the schools of said city under the care and control of said board, upon such terms as said board shall by resolution prescribe, fixing the tuition which shall be paid therefor.

§ 144. It shall be the duty of said board in all their expenditures and contracts to have reference to the amount of moneys which shall be subject to their order during the then current year for the particular expenditure in question, and not to exceed that amount; and they shall apply the moneys levied, raised and received by them for the support of common schools in said city in such a manner as shall secure equal educational advantages to all the children of said city over five and under twenty-one years of age, by continuing the schools in each district an equal period, as near as may be.

§ 145. The said board of commissioners shall be trustees of the school library or libraries in said city, and all the provisions of the law which now are or hereafter may be passed relative to district school libraries shall apply to the said commissioners. They shall also be vested with the same discretion, as to the disposition of the moneys appropriated by any laws of this State for the purchase of libraries, which is therein conferred upon the inhabitants of school districts. It shall be their duty to provide for the safe keeping of the libraries. The city superintendent shall be the general librarian. The board shall also appoint a librarian for each school, to have the care of the books and to superintend the letting out and return thereof. The several school librarians shall from time to time, inform the general librarian of the state and condition of the libraries; and the said board, or the general librarian under the direction or by resolution of the said board, may make all purchases of books for the libraries, and provide for their equitable distribution among the schools, and exchange or cause to be repaired the damaged books belonging thereto, and also to sell any books which may be deemed useless, and apply the proceeds to the purchase of other books for said libraries.

§ 146. It shall be the duty of the said board, at least twenty days before the annual election for commissioners in each year, to prepare and report to the common council true and correct statements of the receipts and disbursements of money under and in pursuance of the provisions of this act, during the preceding year, in which account shall be stated, under appropriate heads;

1. The money raised by the common council under the one hundred and fortieth section of this act;

2. The school moneys received by the city treasurer of the city;

3. The school moneys received by the common council, under the one hundred and fortieth section of this act;

4. All other moneys received by the city treasurer, subject to the order of the board specifying the same and sources;

5. The manner in which such sums of money shall have been expended, specifying the amount paid under each head of expenditure. And the common council shall, ten days before such election, cause the same to be published in at least two of the newspapers published in said city.

§ 147. The common council of the said city shall have the power to pass such ordinances and regulations as the said board of education may report as necessary and proper for the protection, safe keeping, care and preservation of the school-houses, lots, sites, appurtenances and appendages, libraries and all necessary property belonging to or connected with the schools in said city, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in this act; and all such penalties shall be collected in the same manner that the penalties for the violation of the city ordinances are by law collected, and when collected shall be paid to the city treasurer of the city, and be subject to the order of the board of education in the same manner as other moneys raised pursuant to this act.

§ 148. It shall be duty of the common council, within fifteen days after receiving the certificate of the commissioners required by the one hundred and fortieth section of this act of the sums necessary or proper to be raised under the one hundred and fortieth section of this act, to determine and certify to said board of education the amount that will be raised by them for the year commencing on the first Monday of January thereafter for the purposes mentioned in said one hundred and fortieth section, distinguishing between the amount to be raised for teachers' wages and contingent expenses and the amount to be raised for the repair of school-houses; and in case the said common council shall neglect or fail to certify to the board of education the amount that will be raised by them within thirty days, as above specified, then the said common council shall raise the several amounts embraced in the certificate of the board of education, as specified therein, which amounts shall be subject to the disposal of the board of education.

§ 149. All the moneys required to be raised by virtue of this act, or received by the said city for or on account of the common schools, shall be deposited for the safe keeping thereof with the city treasurer of said city, to the credit of said board of education, and shall be drawn out, in pursuance of a resolution or resolutions of said board, by drafts drawn by the president and countersigned by the clerk of said board, payable to the order of the person or persons entitled to receive such moneys, and said city treasurer shall keep the funds authorized by this title to be received by him separate and distinct from any other fund which he is or may by law be authorized to receive.

§ 150. The said board of education shall have power to establish and cause to be kept such number of schools in said city for the instruction of colored children as they shall deem expedient.

§ 151. The said board of education shall possess all the powers and be subject to all the duties and responsibilities of trustees of common schools in the towns of the State, in



respect to the schools mentioned in the last preceding section, so far as the same are applicable; and shall pay the compensation of the teachers of the said schools, and all the other expenses thereof, out of the moneys raised by tax under this act for the support of common schools; and, until such schools for the instruction of colored children shall be so provided, it shall not be lawful to impose any tax upon the property of any colored person in said city for the support of the common schools. No member of the board of education shall vote for the payment of any money out of any of the funds authorized to be raised by section one hundred and forty of the city charter, knowing that such fund is without money to pay the same, and any person violating this provision shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars nor more than one hundred dollars, and be imprisoned in the Monroe county penitentiary for the period of ten days. And the district attorney of the county of Monroe is hereby specially directed, and it shall be his duty, to prosecute all persons violating this provision upon the complaint of any tax payer of said city.

§ 152. Whenever the said board of education shall determine to establish any school for the instruction of colored children, they shall divide the said city into convenient districts for the accommodation of such children, and enter the boundaries thereof on their records; they shall make an estimate of the expense of erecting a suitable school-house in each of said districts, and determine the sites thereof respectively, and report all their doings under this section to the common council.

§ 153. The common council shall have power to raise by general tax, in the manner hereinbefore provided, and on a separate warrant, such sum as shall be necessary to build a school-house in each of the said districts, or in as many of them as they may deem expedient, not exceeding in the aggregate the sum of five thousand dollars, or the said common council may refuse to raise such tax.

§ 154. In case the common council shall refuse to raise such tax, the said board of education shall have power to provide and lease suitable rooms or buildings for the accommodation of such schools or either of them; but the annual expenditure for this purpose shall not exceed the sum of five hundred dollars.

Whenever the said board of education shall have established, in connection with the public schools of the city, a high school for the accommodation of pupils pursuing the branches of education usually taught in academies, the Regents of the University of the State of New York may, upon the application of said board of education, acknowledge and declare said high school to be an academy; and it shall thereafter be an academy, subject to such rules and regulations as said regents may prescribe; provided, however, that nothing in this section shall affect the rights and duties of said board of education, granted or imposed by this act, or the statutes of this State relating to common schools.

§ 263. The board of education is hereby authorized to organize a "teachers' class" in the free academy, or high school of said city, which shall be entitled to an annual allowance from the "literature fund" of the State of New York, on the conditions and rules of the Regents of the University, adopted for the distribution of said fund in other academies of the State in which such classes are instructed.

## ROME.

[*Chap. 177, Laws of 1867, p. 263.*]

SECTION 1. The first section of the act entitled "An act to make the common schools free in district number five, in the town of Rome, in the county of Oneida, and to provide a tax for that purpose," passed April tenth, eighteen hundred and sixty-two, is hereby amended so as to read as follows, viz.: The common schools in school district number five, in the town of Rome, in the county of Oneida, shall be free to all children between the ages of five years and twenty-one years, residing in said district; and rate bills therein are hereby abolished. The trustees of said district shall have the power, and it is hereby made their duty to raise, from time to time, by tax to be levied as other taxes upon the property in said school district, which shall be liable for ordinary school district taxes, such sum or sums of money as the trustees of said district may deem necessary for the payment of teachers' wages, after applying all other moneys belonging to said district which may be applicable to the payment of the wages of teachers.

§ 2. The second section of the act hereby amended is hereby repealed.

§ 3. The trustees of said school district are hereby authorized, at any time during the year eighteen hundred and sixty-seven, to raise by tax such a sum as may be necessary, not exceeding eight thousand dollars, for the erection of a new school-house in said district. The said trustees, however, shall previously give a bond in the sum of eight thousand dollars, to be approved by the surrogate of said county, and filed in the said surrogate's office.

## SAG HARBOR.

[*Chap. 441, Laws of 1862, p. 799, as amended by Chap. 295, Laws of 1864, p. 730.*]

SECTION 1. School district numbers twenty-one and eleven, of the town of Southampton, and number nine of the town of East Hampton, all lying within or adjoining the corporate limits of the village of Sag Harbor, are hereby consolidated for the purposes in this act specified, and shall hereafter, for such purposes, form but one school district, to be called

the "union school district of Sag Harbor." The portion of school district number nine, of the town of East Hampton, not embraced in the corporation limits, is hereby attached to the adjoining school district of the town of East Hampton. [*As amended by chapter 295, Laws of 1864, p. 720.*]

§ 2. The said district shall be under the direction of a board to be styled "the board of education," which board shall consist of six members, four or more of whom shall constitute a quorum for the transaction of business. Cleveland S. Stillwell, Brinley D. Sleight, Oliver R. Wade, William H. Gleason, Stephen B. French and Jonas Winters, shall compose the first board of education, who shall be divided into three classes, each class containing two members, and shall determine by lot their respective terms of office, so that the first class shall serve to the first annual meeting ensuing, the second one year, and the third two years from said meeting.

§ 3. At the annual meeting of said district to be held on the second Tuesday of October in each year, which, as well as all special meetings, shall be held at the corporation hall, or at such convenient place in said district as the board may in their previous notice designate, there shall be elected by ballot, for three years, two members of said board of education, who shall be residents and taxable inhabitants of said district. The polls of said election shall be kept open for one hour from the time of opening the same, or such longer time as the board may in their previous notice indicate. [*As amended by chap. 295, Laws of 1864, p. 720.*]

§ 4. Said board of education shall possess the powers and authority and be subject to the same duties and liabilities in respect to said district as trustees of common schools in this State;

§ 5. Said board of education shall also have the power, and it shall be their duty:

1. To appoint a clerk and librarian, who may be of their number, who shall hold office during the pleasure of the board, and whose compensation shall be fixed by a vote of the taxable inhabitants of said district;

2. To divide the said school into primary and higher departments; to regulate the transfer of scholars from one department to the other; to provide suitable instructors for each department, and direct what text books shall be used therein;

3. To fix and regulate the rate of tuition for resident scholars in said primary and other higher branches in said school or schools, to sue for and collect, in their corporate name, any sum of money due to said district, and to levy a tax upon the taxable property of said district for any deficiency which may exist for the payment of teachers' wages. [*As amended by chap. 295, Laws of 1864, p. 720.*]

4. To establish and cause to be kept a school in said village for the instruction of colored children;

5. To have in all respects the superintendence, supervision, management and control of said school or schools, and to hire, pay and discharge any teacher employed by them in said school;

6. To purchase fuel and other necessities for the use of the school or schools in said district; and all contracts made by them in their official capacity shall be binding upon them and their successors in office, provided that no contract shall be made for a longer period than two years, except contracts relating to the construction of buildings authorized by this act, and the loans which may be necessary to effect that purpose;

7. To make such by-laws as they may deem necessary to secure the prosperity, order and government of said school;

8. To receive and apply to the uses of said school or schools, or any department thereof, any gift, legacy, bequest, devise or annuities, given, bequeathed or devised to said district for the purposes of said school or schools, and apply the same, or the interest or proceeds thereof, according to the terms or instructions of the donor or testator;

9. To defray the necessary contingent expenses of the board, including an annual salary to the clerk;

10. To fill any vacancy which may happen in said board by reason of death, removal or refusal to serve, of any member or officer of said board; and the person so appointed in the place of any member of the board shall hold his office until the next annual meeting of said district;

11. To prosecute for all forfeitures and penalties under this act, and when recovered to apply the same to the purposes of education in said district.

§ 6. The said board may declare vacant the place of any member thereof who, without satisfactory cause, shall omit to attend the legally called successive meetings of the board.

§ 7. Every resignation of officers appointed or elected under this act shall be made in writing to the president of the board of education, and such resignation shall have no force or effect, nor in any degree excuse such officer from the discharge of his duties, until the same be accepted and approved by a resolution of said board.

§ 8. The several schools under the care of the said board shall, as to the common school department thereof, be subject to the supervision of the commissioner of common schools in like manner as the other common schools in this State.

§ 9. The clerk of the said board shall attend all school meetings of the inhabitants of said district, and also all the meetings of the board, and act as secretary thereof. He shall notify all officers elected or appointed of their election or appointment, within two days thereafter. He shall keep a record of the proceedings of the board, and perform such other duties as they may prescribe. The said record or transcript thereof, certified by the president and clerk, shall be received in all courts as *prima facie* evidence of the acts of said trustees.

§ 10. The village collector shall be ex-officio collector of said school district, and shall possess the powers and authority, and be subject to the same duties and obligations, as such officer in the several school districts of this State.

§ 11. The village treasurer shall be ex-officio treasurer of said school district, and all moneys to be raised pursuant to the provisions of this act, and all school moneys or other funds by law appropriated to or provided for the schools of said village, shall be paid to him as such treasurer. He shall be liable to the same penalties for any official misconduct in relation to said moneys as for any similar misconduct in relation to the other moneys of said village. He shall keep the funds authorized by this act to be received by him separate and distinct from any other fund which he is or may by law be authorized to receive. He shall pay out all school moneys, on the warrant of the board of education, signed by its president and clerk. He shall receive for all moneys that he shall disburse upon said warrant one-half of one per cent; provided that for all service required of him under this act he shall not receive an amount exceeding twenty-five dollars in any one year.

§ 12. Such treasurer and collector shall severally, before entering upon the duties of their offices, execute and deliver to the said board of education a bond, with such sufficient penalty and sureties as the board may require, conditioned for the faithful discharge of the duties of their respective offices. And in case such bond shall not be given, such offices shall thereby become vacant, and said board shall thereupon make other appointments to supply such vacancies.

§ 13. It shall be a sufficient notice of any annual, special or adjourned district meeting, to publish such notice in the papers printed in said village, and by affixing a copy of the same on the outer door of the district school-house (if there be any), and posting a copy of the same in five other public places in such district; the posting of said notice to be done at least five days before such meeting, and no other notice of any such meeting need be given.

§ 14. The legal voters of said district, at any annual, special or adjourned meeting legally held, may by a three-fifths vote raise such sum of money as they shall deem expedient, not exceeding the sum of ten thousand dollars, for the purpose of purchasing a site and building a school-house in said district, or for the purpose of purchasing any suitable buildings and site for such purpose; to erect out-buildings, to inclose the same with a fence, and for such other improvements as may be considered necessary, and may also direct the board of education to cause the same to be levied by installments, and make out a tax list for the collection of the same as often as such installments shall become due; and the said board of education are hereby authorized to obtain, by loan, the whole or any part of the money legally voted by said district, and secure the payment of the same by their official bond as representatives of said district, as also to collect by tax from said district a sum sufficient to pay interest on said loans.

§ 15. The valuations of taxable property in said district shall be ascertained, as far as possible, from the last assessment roll of the said village. [*As amended by chapter 295, Laws of 1864, p. 720.*]

§ 16. The said board of education shall have power to establish and organize a classical department in said school, to be known by the name of the "Sag Harbor academy," and such academical department shall be under the visitation of the Regents of the University, and shall be subject in its course of education and matters pertaining thereto (providing said district comply with the provisions of the statutes now in force relating to the organizing and chartering of academies or academical departments), and to all the regulations made in regard to academies by the said Regents; and in such department the qualifications for the entrance of any pupil shall be the same as those established by the said Regents for admission into any academy of the State under their supervision. And such academical department shall share in the distribution of the income of the literature fund and of the income of the United States deposit fund, with the academies in the State subject to the visitation of the Regents.

§ 17. The trustees of said districts numbers twenty-one and eleven, of the town of Southampton, and number nine of the town of East Hampton, holding office at the time of the passing of this act, shall, within three months after the organization and establishment of the union school under this act, sell at public auction or private sale, as they may deem expedient, the district property in their respective districts.

## SALEM.

[*Laws of 1851, chap. 206, p. 381.*]

§ 88. The board of trustees [of the village of Salem] aforesaid shall, within twenty days after the passage of this act, appoint six commissioners of schools. The persons so appointed shall, within five days after their appointment, take the oath of office prescribed by the Constitution of this State for State officers, and file the same with the clerk.

§ 89. The board of trustees shall divide the said commissioners into three classes, to be denominated first, second and third, and shall designate to which class each person so appointed shall belong. The term of office of the first class shall expire on the last Monday in April next thereafter; of the second, in one year; and the third, two years from the said last Monday in April.

§ 90. There shall be elected at the next annual election thereafter two commissioners of schools, and each year thereafter a like number, to supply the places of those whose term is about to expire; and the term of office shall be three years, except when (elected or) appointed to fill a vacancy. [*As amended by chap. 31 of 1853.*]

§ 91. The board of trustees may make appointments to fill vacancies which may occur from any cause other than the expiration of the term of office of those elected. The com-

missioners so appointed shall hold their offices for the unexpired term of those to supply whose places they are appointed.

§ 92. The president of the board of trustees, together with the said commissioners, shall constitute a board to be styled "the board of education of the village of Salem," and shall be a corporate body in relation to all the powers and duties conferred or imposed by law. In the absence of said president, such board may appoint one of their number to preside. A majority of such board shall be a quorum. No member of such board shall receive any compensation for his services. The clerk of said village shall be clerk of said board.

§ 93. The clerk of said board of education shall keep a record of the proceedings thereof, and perform such other duties as the board may prescribe; such record or a transcript thereof, certified by such clerk under the seal of the said board, shall be presumptive evidence of the facts therein set forth; and such record, and all the books, accounts and proceedings of said board, shall be subject to the inspection of said board of trustees, and of any committee thereof. Such clerk shall also perform all the duties, and shall be vested with all the powers conferred or imposed by law on clerks of school districts in towns so far as such laws may be applicable and can be applied to such village, and are not inconsistent with this act. He may appoint a deputy, who shall be vested with the same powers.

§ 94. The board of trustees aforesaid shall have power, and it shall be their duty, to raise from time to time by tax, upon the taxable property and persons in such village which shall be liable to taxation for county purposes, in addition to the amount now or hereafter to be provided by law for common schools in said village, such sums as may be determined and certified by said board of education to be necessary for any or all of the following purposes:

1. To purchase, lease or improve sites for school-houses and appurtenances;
2. To build, purchase, lease, enlarge, alter, improve and repair school-houses and their out-houses and appurtenances;
3. To purchase, exchange, improve and repair school apparatus, books, maps and charts, furniture and appendages; provided, however, that class or text books shall not be furnished for any scholars whose parent or guardian shall be able to furnish the same;
4. To procure fuel and defray the contingent expenses of schools and of the school library;

5. To pay teachers' wages;

6. To pay charges or expenses incurred by law or necessary to carry this act into effect, or to refund loans contracted by law and to pay the interest thereon, or to pay such sums as shall be required to fulfill any contract duly made under the provisions of this act.

§ 95. The board of trustees shall cause the amount of such school tax to be added, in a separate column, to the assessment roll for ordinary taxes in said village; and they shall cause the same to be assessed, levied and collected at the same time and by the same warrant, and in the same manner with the taxes raised for village purposes as aforesaid.

§ 96. All moneys raised for school purposes in said village, and all belonging thereto payable from other sources, shall be paid to the treasurer of said village, who, together with the sureties on his official bond, shall be accountable therefor in the same manner as for other moneys of the said village. The treasurer shall also be liable to the same penalties, for any official misconduct in relation to such moneys, as for any similar misconduct in relation to other moneys of said village.

§ 97. The treasurer shall keep a separate account of all moneys in his hands or received for school purposes, to be called the "school fund." No payment shall be made out of that fund, except upon orders duly drawn, in pursuance of a resolution of said board of education, and certified by the clerk and countersigned by the president of said board. The treasurer shall in his annual report state fully the account of all receipts and disbursements from that fund during the year, and the balance, if any, in his hands. His account as to the school fund shall be examined by the board of education annually, who shall report thereon to the trustees.

§ 98. The said board of education shall have power, and it shall be their duty:

1. To establish and organize such and so many schools in said village, including the common schools therein, as they shall deem requisite and expedient, and to alter and discontinue or change and consolidate the same;

2. To purchase or hire school-houses and rooms and lots or sites for school-houses, and to fence, improve and repair them as they shall judge expedient;

3. Upon such sites or lots, or upon any lots owned by said village, to build, enlarge, alter, improve and repair school-houses, out-houses and appurtenances, as they may deem advisable;

4. To purchase, exchange, improve and repair school apparatus, books for indigent pupils and for the school library, to provide fuel and lights, furniture and appendages for the schools and defray their contingent expenses and the expenses of library;

5. To have the custody and safe keeping of the school-houses and all the school property aforesaid, and to see that the ordinances of the board of trustees in regard thereto be observed, and to report to them any violation thereof;

6. To contract with, examine, license and employ all teachers in the schools, either high or common, and in all branches or departments thereof, and at their pleasure to remove them;

7. To pay the wages of such teachers out of the school moneys which shall be appropriated and provided by the said village, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised by this act by tax as aforesaid;

8. To defray the necessary contingent expenses of the board of education, provided that the account of such expenses shall be first audited and allowed by the board of trustees;

9. To have in all respects the superintendence, supervision and management of the schools aforesaid; to adopt, alter, modify and repeal, as they may deem expedient, rules and regu-

lations for their organization, government and instruction, for the reception of pupils and their transfer from one school to another, and generally for their good order, prosperity and public utility;

10. Whenever in the opinion of the board of education it may be advisable to sell any of the school-houses, lots or sites, to report the same to the board of trustees;

11. To prepare and report to the board of trustees such ordinances and regulations as may be necessary and proper for the protection, safe keeping, care and preservation of property held for school purposes, and to suggest proper penalties for the violation thereof; and annually to determine and certify to said board the sums in their opinion necessary to be raised for the several school purposes specified in this act;

12. To provide for the payment to any adjoining school district, or any person or persons entitled thereto, of any sum on account of such person, or any part of said district being or having been included or connected with territory not now included in said village;

13. Between the first day of July and the first day of August, in each year, to make and file with the county clerk and with the clerk of said village a report, in writing, bearing date the first day of July in each year, and stating:

I. An account and description of all the schools kept in said village during the preceding year, and the time they have severally been taught;

II. The number of children taught in said school respectively, and designating the number over five and under sixteen years of age residing in said village on the first day of January in said year;

III. The whole amount of school moneys received by the treasurer of said village during the year preceding, designating the amount received from the county treasurer, from the village collector and from other sources, specifying the same;

IV. The manner in which such moneys have been expended, and whether any part remained unexpended, with the amount and cause thereof;

V. The amount of moneys received for tuition fees from foreign pupils or others during the year; the amount paid for teachers' wages in the aggregate, and the amount over and above the public moneys; together with such other facts as relate to common schools as is required by law to be reported by town superintendents, or as said board of trustees shall deem necessary;

14. To establish, organize and maintain in said village, whenever in their opinion it shall be necessary, a union or consolidated school, composed of primary and secondary schools, and a high school, on such plan and under such discipline and management as they shall deem advisable; and in such case to prescribe the course of studies therein, and so arrange and regulate the system of instruction in each of said schools that the transfer of pupils shall thereafter be from the primary directly into the secondary, and thence into the high school or otherwise, as they shall deem advisable. And for the purposes aforesaid, said board shall be vested with all the powers and charged with all the duties and liabilities above specified in regard to schools generally.

And said board may organize and maintain primary, secondary or high schools or either of them in, or cause the same to be taught in connection with, the Washington academy, on such terms and conditions, and for such time, not exceeding ten years, as shall be deemed expedient by and between said board of education and the trustees of such academy; such arrangement shall, if made, be by contract duly executed by said parties, but no such contract shall be made without the assent of the board of trustees of said village; and in such case said board of education are vested with power to make such rules and regulations as they shall see fit as to age or degree of scholarship required to enter said several departments, the compensation and payment therefor and other terms thereof, and the time of continuance therein.

§ 99. Such board of education shall have a standing committee, consisting of not less than three members, whose duty it shall be to visit said schools and each department thereof as often as twice every term, and to make report in writing to said board in regard thereto.

§ 100. The said board of education may permit children of persons not resident within said village to attend said schools on such terms as they shall prescribe; and said board may, in the name of said village, sue for or recover of the father, or mother, master or mistress, or other person under whose charge such child or children may be, all such sums as shall be so prescribed, with costs of suit.

§ 101. The board of education shall be trustees of the district library or libraries in said village. All the provisions of law which now are or hereafter may be passed, relating to school district libraries, shall apply to the said commissioners and board of education, so far as the same are applicable and can be applied, and are not inconsistent with this act, in the same manner as if they were trustees of a school district composed of the said village. They shall be vested with the discretion as to the disposition of library moneys which is by law conferred upon the inhabitants of school districts, and they may consolidate the said libraries, or dispose of parts thereof, as deemed best. It shall be their duty to provide a library room or rooms, and the necessary furniture therefor, appoint a librarian, make all purchases of books, exchange or cause to be repaired all damaged books, and sell those deemed useless or of an improper character, and apply the proceeds to the purchase of others.

§ 102. No trustee of said village or member of said board of education shall be a contractor or be interested in any contract for building or making any erections or repairs authorized by this act, or furnishing materials therefor. All contracts made in violation hereof shall be void, so far as any benefit may be realized therefrom by the offender, and such person shall forfeit to said village fifty dollars, to be recovered by them before any court having cognizance of the same, with costs.

§ 103. The board of trustees of said village may pass such ordinances and regulations as they may deem necessary, or as shall be reported by said board of education, for the protection, safe keeping, care and maintenance of the school-house or other property connected with the schools, or property held or occupied or used for school purposes, and to impose penalties for the violation thereof, subject to the restrictions contained in this act; and all such penalties shall be collected in the same manner as other penalties imposed by said board, and when collected shall be paid to the treasurer, to the credit of the school fund, and be subject to the order of the board of education.

§ 104. Whenever the said board of education shall report to the trustees that it is advisable to sell any of the school property as aforesaid, the said trustees shall sell the same as soon as may be, and upon such terms as said trustees shall deem best. The proceeds of all such sales shall be paid to the treasurer, to the credit of the school fund.

§ 105. The title of the school-house and other school property aforesaid shall be vested in the trustees of the village of Salem; and the same, while used or kept for use for school purposes, shall not be levied on or sold by virtue of any process, or be subject to taxation for any purpose; nor shall the same be incumbered or in any way disposed of, except as authorized by this act. The said village, in its corporate capacity, may take, hold or dispose of any real or personal estate transferred to it by gift, grant or devise, for the use or benefit of said schools, or any of them, and whether the same shall be transferred, given, granted or devised in terms to said village by its proper style, or by any other designation, or to any other designation, or to any person or persons, or body or otherwise, for the use or benefit of said schools or either of them.

§ 106. The town superintendent of common schools of the town of Salem, in making the apportionment of school or library moneys among the several districts in said town, shall allot to said village such sum as shall be its proportion of such moneys, considering such village as a regular school district of said town, and the report of the board of education as the report of its trustees. Such superintendent shall allot to said village in the apportionment to be made on the first Tuesday of April, 1851, such sum as school districts numbers eleven and twelve in said town would be entitled to had said village not been consolidated into one district. All sums allotted as aforesaid, shall be paid by said superintendent to the treasurer of said village, to the credit of the school fund aforesaid, at the same time and in the same manner as to trustees of school districts of said town.

§ 107. Said board of education shall, between the first and fifteenth of January in each year, make and transmit a report in writing to the town superintendent of common schools of the town of Salem, bearing date on the first day of January in such year, and containing a statement of the name and age of each child residing in the said village, on the last day of December previous to the date of said report, over the age of five and under that of sixteen years of age, except Indian children otherwise provided for by law, and the names of the parents or other persons with whom such children shall respectively reside, and the number of children residing with each. Such report shall be the only report required to be made in order to entitle such allotment, as required in the last section. Said schools in said village, and said board of education, shall not in any other respect be bound to report to said superintendent; nor shall such schools or the teachers thereof be in any wise under his control or supervision.

§ 108. In case said board of education shall contract with the trustees of the Washington academy, as authorized in this act, they are further empowered to lease from said trustees the academy building and grounds adjacent, or contract for the joint or several occupation of the same, or so much thereof, or such privileges therein or appertaining thereto, on such conditions, and for such time, not exceeding two years, as they shall deem advisable. And they may pay in advance to such trustees such gross sum for the rent thereof, for such term as, being calculated with a proper rebate for the advance payment, shall be deemed by said board no more than a fair equivalent for the use and occupation thereof for the purposes required under this act. And such sum as shall be necessary for the purposes aforesaid, not exceeding one thousand dollars, may be loaned by the Comptroller to said village out of any moneys belonging to the common school fund, on receiving from the board of trustees of said village the bond of said village therefor, payable in five equal payments with annual interest. The moneys received thereon shall be paid to the treasurer, to the credit of the school fund, and shall be drawn out in the same manner as other moneys in that fund; provided, however, that no such contract shall be made, nor any loan obtained by said board of education, without the previous assent of the board of trustees of said village. In case said loan shall be made, said trustees shall annually raise during each of said five years by tax, in the same manner and at the same time as other village taxes are raised, such sum as, over and above the expenses of collection, will pay the several installments so to grow due on such loan, with the interest.

§ 109. Any contract, lease or agreement made or executed by said board of education with the trustees of the Washington academy, under the provisions of this act, may be vacated, modified or renewed by the parties aforesaid, by and with the assent of the board of trustees of said village; provided no renewal thereof shall be made for a term exceeding ten years at any one time.

§ 110. All the property, real and personal, belonging to the districts numbers eleven and twelve shall be and is hereby transferred to and vested in the trustees of the village of Salem for school purposes; and they are authorized to take the same into their possession, and hold, use and occupy the same, and exercise the same powers in regard thereto, as if they had purchased the same for school purposes under this act; and the present trustees and officers of said district are hereby required to deliver possession thereof, and of all books, papers and vouchers connected therewith, to said board, and said board may sue for and recover the same with costs of suit of any person having the same or any part thereof.

§ 111. All debts and legal liabilities of said school districts numbers eleven and twelve shall be audited, paid, satisfied and discharged by said board of education out of the school fund.

§ 112. Each and every of the schools established or maintained under this act shall be free to the children of all residents of said village; provided, however, that said board of education may cause the tuition fee to be charged and collected of the father or mother, master or mistress, or other person (in whose charge such pupil may be), residing in said village, of any pupil over sixteen years of age, or who shall pursue studies which said board shall deem should not be tuition free. For the purpose of collecting such fees such board shall by general rules provide for the keeping of proper registers, in which shall be entered the name of every such pupil, and his father or mother, master or mistress, or other person in whose charge such pupil may be, the length of time such pupil shall attend such school, and the tuition fee chargeable therefor. Immediately previous to the issuing of the warrant for the collection of the annual village tax, said board of education shall cause to be presented to the board of trustees an abstract from such registers, containing a statement of names of every such father or mother, master or mistress, or other person residing in such village, from whom any sum or amount was due for such tuition fees at the close of the term previous to the presentation of such lists. The annual tax list shall contain a column headed "tuition fees," in which shall be entered, opposite the name of such person, the amount so returned as aforesaid, which sum shall be included in the aggregate column to be collected under such warrant; and the same proceedings shall be had for the collection thereof as for other village taxes; and when collected the same shall be paid to the treasurer, to the credit of the school fund; but such return so made shall not include the name of any person who shall, in the opinion of the board, be in indigent circumstances; any person specified in such return may, at any time before the collection of said tuition fee, apply to said board of education for a remission of the same; and if said board shall deem proper, they may, by resolution, duly passed, remit the same in whole or in part, and the clerk shall certify such remission to the collector, and no further proceedings shall be had for the collection of the sum so remitted.

§ 113. Nothing in this act contained shall prevent the trustees of the Washington academy from receiving from the Regents of the University any sum or allowance for pupils pursuing classical studies therein, or for organizing and maintaining a teachers' department therein. And any pupil in any of the departments organized in said academy under the provisions of this act pursuing such classical studies as are required by the Regents aforesaid, in order to be entitled to an allowance, and being of sufficient age, shall be included in the returns of said trustees to said Regents, and they shall be entitled to the same allowance for such pupil or pupils as for other classical pupils heretofore.

[By chapter 31, Laws of 1853, page 38, the boundaries of the village were so altered as to exclude therefrom the lands then occupied by Wm. McKie, and lying on the westerly side of lands owned and occupied by the Troy and Rutland Railroad company. And by chapter 143, Laws of 1863, page 226, the boundaries were again altered so as to exclude lots 55 and 150, of Turner's Patent, and also the lands mentioned in a deed of conveyance from Thomas J. Boyd and Ellen his wife to James Collins, dated April 1, 1861. And by section 4, of the last named act, the lands thus excluded from the village were made part of the school and highway districts of which they formed a part prior to the passage of chapter 206, Laws of 1851.]

## SALINA.

[Chap. 211, Laws of 1860, p. 354, as amended by chap. 205, Laws of 1865.]

SECTION 1. School district number one, in the town of Salina and county of Onondaga, shall form a permanent district, not subject to alteration by the school commissioners, unless to enlarge by adding new territory.

§ 2. Said school shall be free to all persons between the ages of four and twenty-one years residing in the district.

§ 3. The trustees of said district shall have power, and it shall be their duty, to raise, from time to time, by tax to be levied equally upon all real and personal property in the district which shall be liable for ordinary school district taxes, such sum or sums of money, not exceeding twelve hundred dollars in any one year, as the trustees may deem necessary, for the payment of teachers' wages, after having applied all other moneys belonging to said district which may be applicable to the payment of teachers' wages.

## SALINA, DISTRICT NO. 6.

[Chap. 756, Laws of 1867, p. 1863, vol. 2.]

SECTION 1. All that part of the town of Salina bounded and described as follows, viz.: "The territory bounded on the west by the east line of the village of Liverpool; on the south by the north shore of the Onondaga lake; on the east by the west bounds of the city of Syracuse; and on the north, from the point where the Onondaga salt springs reservation line strikes the city line, westerly to the north-west corner of the farm of Hiram L. Hawley; thence south and west on the line of said farm to the east line of the village of Liverpool." is hereby made and constituted into a separate school district, to be hereafter known and

designated as school district number six of the town of Salina; and Simon Stevens, Oscar L. Soule and Hiram L. Hawley, shall be the first trustees, and David S. Earll shall be the first clerk of said school district; said trustees shall hold their offices in the order in which they are named herein, for the term of one, two and three years respectively, after which times, and upon each vacancy the officers of said school district shall be elected in the manner now prescribed by law. This district shall be subject to alteration by the school commissioner in like manner as other school districts.

§ 2. Said school shall be free to all persons between the ages of five and twenty-one years residing in said district. All payment for teachers' wages shall be by tax and not by rate bill.

§ 3. The trustees of said district shall have power, and it shall be their duty, to provide a good site for a school-house for the purposes of said school, and said site shall embrace not less than three-fourths of an acre; and they shall have power and are hereby required to raise by tax, to be levied equally upon all the real and personal property in the district liable to taxation for school purposes, not less than the sum of three thousand dollars and not exceeding five thousand dollars, as they shall deem necessary for the purpose of building, erecting, fencing in and suitably furnishing a school-house on said site, which school-house shall be built, erected and furnished with no unreasonable delay, and from time to time in like manner, to raise from year to year such [moneys] as the trustees shall deem necessary for the payment of teachers' wages and other incidental expenses of said district, after having applied all other moneys belonging to said district which may be applicable to teachers' wages.

§ 4. So much of act, chapter two hundred and eleven of the Laws of eighteen hundred and sixty, entitled "An act to constitute school district number one, in the town of Salina and county of Onondaga, a free school," passed April ninth, eighteen hundred and sixty, as may be inconsistent with this act, is hereby repealed.

#### SARATOGA SPRINGS.

[*Chap. 353, Laws of 1867, p. 730, vol. 1.*]

SECTION 1. All school districts or parts of school districts within the corporate limits of the village of Saratoga Springs, in the county of Saratoga, are hereby consolidated into one school district, to be called the "union free school district of Saratoga Springs," and said school district, for the purpose of the apportionment and distribution of school money which, from any source, may be collected or received, shall be a school district under the general school laws of the State.

§ 2. The school or schools in said school district shall be under the management and control of nine trustees, being taxable inhabitants of said district, who shall be denominated "the board of education of the union free school of the village of Saratoga Springs;" and said board is hereby constituted a body corporate, with all the powers conferred and duties enjoined upon them by this act, and shall have a corporate seal such as said board may designate. The first board of education under this act shall be constituted as follows: Oliver L. Barbour, Augustus Bockes and John Shipman, as trustees of the first class, whose term of service shall expire on the fourth Tuesday of October, eighteen hundred and sixty-eight; Joseph A. Shoudy, Thomas Flanagan and Aaron Hill, as trustees of the second class, whose term of service shall expire on the fourth Tuesday of October, eighteen hundred and sixty-nine, John Woodbridge, John Palmer and Charles S. Lester as trustees of the third class, whose term of service shall expire on the fourth Tuesday of October, eighteen hundred and seventy, and thereafter the term of service of the class which has served the longest period shall expire on the fourth Tuesday of October in each year. The trustees of the village of Saratoga Springs shall order a special election, to be held on the second Tuesday of October in each year, except the year eighteen hundred and sixty-seven, at one of the school-houses, under the inspection of said trustees, to elect three trustees as members of said board of education, at which election any vacancies that may have occurred during the year may be filled. At said election the polls shall be open from ten o'clock A. M. until four o'clock P. M. of that day, and only those entitled to vote at ordinary school elections shall be entitled to vote.

§ 3. The board of education above named shall hold its first meeting within two weeks after the passage of this act, at a time and place to be designated by the member of the board first named in the second section of this act. The members of the board shall take the usual oath of office, and shall elect a president from among their number, who shall hold his office during the pleasure of the board. No member of the board shall receive compensation for any official service, nor shall he be interested, directly or indirectly, in any contract, purchase or expenditure which the board at any time may order.

§ 4. The said board of education shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or, in case of his absence or inability to act, by any member of the board, as often as necessary, by giving personal notice to each member of the board, or by causing a written or printed notice to be left at his last place of residence, at least twenty-four hours previous to the hour appointed for such special meeting.

§ 5. The title to all the real and personal estate appertaining to the schools heretofore mentioned shall be vested in the board of education, and the same shall not be subject to taxation or assessment for any purpose whatever.



§ 6. The board of education shall have power and is hereby directed :

1. To establish and organize in said village as many and such public schools, with graded departments (including an academical department), and schools for colored children, as said board may deem requisite and expedient, and to alter or discontinue the same at its discretion ;

2. To rent or purchase and prepare such houses or rooms as may be found necessary for properly conducting such schools, but no entirely new structure designed for the academical department, to be erected until after the expiration of three years from the passage of this act ;

3. To purchase, exchange, improve and repair any school apparatus, books, furniture or appendages, and to defray the expense of the free library ;

4. To have the custody and safe keeping of all the school-houses, out-houses, books, furniture and appurtenances, and to see that all the village ordinances and rules of the board of education relative thereto are observed ;

5. To contract with and employ all necessary teachers, subject to removal at the pleasure of the board ;

6. To provide evening schools for the benefit of those whose ages or avocations are such as to prevent their attendance upon the day schools established under this act ;

7. To pay the wages of such teachers out of the fund appropriated and provided by law for this purpose ;

8. To defray the necessary contingent expenses of the board, including the wages of janitors ;

9. To expend all moneys raised in accordance with this act for buildings, for the purchase of grounds, or for any other purposes for which the same may be required, in such manner as they may deem proper ;

10. To have the superintendence and management of the common schools in said village, and, from time to time, to adopt, alter, modify or repeal, as they may deem expedient, any rules or regulations for the organization, government and instruction of said schools, for the reception of pupils, their transfer from one department to another, for their advancement from class to class, as their degree of scholarship shall warrant, and generally for the promotion of the good order, prosperity and public utility of said schools ; and if at any time an academical department shall be established by said board, it shall be entitled to its distributive share of the literature fund, in like manner and on like conditions with the academies of this State, and shall be subject to the visitation of the Regents of the University, as are the other academies of the State.

§ 7. It shall be the duty of the board of education, on or before the first day of April in each year, after the year eighteen hundred and sixty-seven, to determine and certify to the corporate authorities of the village of Saratoga Springs, what sums are necessary under section six of this act, exclusive of such moneys as are to be received from public funds. These sums shall be raised and collected at the same time and the same manner as other village taxes. And the board of education shall have power to raise, when necessary, by loan, in anticipation of the collection of such taxes, any sum required to meet the ordinary expenses of the schools.

§ 8. The treasurer of the village shall take charge of all moneys raised pursuant to this act or provided for the board of education from any source, and he shall be accountable for their safe keeping in the same manner as for the safe keeping of other funds. These moneys shall be paid out by him only on drafts drawn by the president of the board of education, and countersigned by the secretary, in pursuance of a resolution of the board ; and all drafts shall be made payable to the order of the person or persons receiving the same.

§ 9. The board of education shall elect a secretary, who shall hold office during the pleasure of the board ; but he shall not be removed, except for inefficiency or misconduct, without six months' previous notice. The board shall fix his salary, and he shall be the superintendent of all the schools under the care of the board. He shall, under the direction of the board, determine the course of studies to be pursued in the different schools, and shall himself have the personal superintendence of the highest school established.

§ 10. The secretary of the board shall report to the board of education, on or before the first day of March in each year, the condition of all the departments in the schools, with the number in attendance, the studies pursued, and whatever, in his opinion, may be needed to advance the interests of the union free school. This report shall also state the number of children, within the limits of the district, who are in attendance upon private schools, and of such as do not attend any school. It shall further furnish estimates of the number of teachers needed, and of the ordinary expenses to be incurred, for the year following the date of said report.

§ 11. Each member of said board shall visit all the schools in said district, at least twice in each year of his official term, and said board of education shall provide that each of said schools shall be visited by a committee of three or more of their number at least once in each term.

§ 12. The said board of education shall be trustees of the school libraries of said district, and all the provisions of law which now exist or hereafter may be passed relative to school district libraries, shall apply to the said board in the same manner as if they were trustees of a school district comprehending said village ; they shall also be vested with the same discretion as to the disposition of the moneys appropriated by the laws of this State for the purchase of libraries, as is conferred by said law on the inhabitants of school districts. It shall be their duty to provide rooms for such libraries, and the necessary furniture therefor. The librarian shall report to the board the condition of the libraries under his charge ; and the said board, or secretary, under the direction and by the resolution of said board, may make all purchases of books for said libraries, and may direct the mode of their distribu-

tion; and may dispose of any books that may be deemed useless, applying the proceeds to the purchase of new ones.

§ 13. The board of education shall have power to take, hold, sell, transfer and convey any of the real or personal estate transferred to it by gift, grant, devise or bequest for the benefit of any of the schools under its control, and appropriate the avails in scholarships or prizes, or in such other manner as the donor may designate.

§ 14. The clerk of the village shall notify any person elected a member of the board of education, within ten days thereafter, of his election, and the secretary of the board shall notify him of the time and place of the meeting, at which he shall take his place as a member of said board.

§ 15. The board shall have power to charge a tuition fee for all pupils attending the high school, but such fee shall not exceed the sum of five dollars per term for each pupil residing in the district; but the board may determine the amount of tuition fee for pupils not belonging to the district, in attendance upon any of the schools.

§ 16. The board shall cause to be prepared and presented to the trustees of the village, and published in the newspapers in the district, at such time as they may direct, a full annual report, stating:

1. What schools have been kept during the year, and for what time;
2. The number of children on the roll of each school, and the average attendance of each, and the number of children in the district between the ages of four years and twenty-one years;
3. The amount of school moneys received by the treasurer, from what sources, and for what purposes expended.

§ 17. The trustees of the village of Saratoga Springs are hereby directed and empowered, and it shall be their duty, to raise and collect by tax, in the same manner as other taxes are collected, such sums as the board of education hereby established shall deem needful in order to organize and carry on the schools of the district until the time named in section seven of this act.

§ 18. The board of education shall meet all liabilities of the trustees of school districts numbers one, two, eight and nine, in the town of Saratoga Springs, and shall succeed to all their rights and rights of action, and nothing in this act shall impair their contracts or interfere with or prevent the collection of such tax or rate bill as at the time of the passage of this act was in the hands of the collector for collection.

[*Chap. 757, Laws of 1867, p. 1958, vol. 2.*]

SECTION 1. Section two of "An act to consolidate the several school districts and parts of districts within the corporate limits of the village of Saratoga Springs, and to establish a free union school or schools therein," is hereby amended by inserting the name of James B. McKean in the place of Augustus Bockes, as trustee.

§ 2. A majority of the trustees constituting the board of education shall constitute a quorum for the purpose of organization or the transaction of any business at any of the regular meetings of the said board, and at any special meeting when all the trustees have been notified as required by said act.

## SCHENECTADY.

[*Laws of 1862, chap. 385, title 6, p. 644.*]

SECTION 1. There shall be elected in said city, at a special election to be held on the first Tuesday of May, in each year, in the same manner and under the same regulations as other ward officers are elected, one commissioner of common schools for each ward to supply the places of those whose terms are about to expire; they shall hold their offices for two years, and until others are elected and have taken the oath of office. The term of the office of all the commissioners elected pursuant to this act shall commence on the Tuesday next after the election.

§ 2. The common council of said city may make appointments of commissioners of common schools, to fill vacancies which may occur from any other cause than the expiration of the term of office of those elected. The commissioners so appointed shall hold their office until the Tuesday next succeeding the next annual election; and at each annual election there shall be chosen a commissioner to supply the place of any person so appointed; and the person thus elected shall serve out the unexpired term.

§ 3. Any commissioner of common schools in said city may be removed from office for official misconduct, by the common council of said city, by a vote of two-thirds of the members thereof, but a written copy of the charges preferred against said commissioner shall be served upon him, and he shall be allowed an opportunity of refuting any such charges of misconduct, before removal.

§ 4. The commissioners of common schools in said city shall constitute a board, to be styled "the board of education of the city of Schenectady," which shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of this title. A majority of the board shall constitute a quorum. The annual meeting of said board shall be held on the Wednesday succeeding the second Tuesday of May in each year. At such annual meeting, they shall elect one of their number president of the board, and whenever he shall be absent a president pro tempore may be appointed. The said commissioners shall receive no compensation for their services, nor shall they be interested, directly or indirectly, in

any contract for building or for making any improvement or repairs provided for by this title.

§ 5. The said commissioners shall meet for the transaction of business as often as once in each month, and may adjourn for any shorter time. Special meetings may be called by the president, or, in his absence or inability to act, by any member of the board, as often as necessary, by giving personal notice to each member of the board, or by causing a written or printed notice to be left at his last place of residence, at least twenty-four hours before the hour for such special meeting.

§ 6. The said commissioners shall appoint a secretary and librarian, who shall hold his office during the pleasure of the board, and whose compensation shall be fixed by the board. The said secretary shall keep a record of the proceedings of the board, have charge of the library, and perform such other duties as the board may prescribe. The said record or transcript thereof certified by the secretary, shall be received in all courts as *prima facie* evidence of the facts therein set forth; and such record, and all the books, accounts, vouchers and papers of said board, shall at all times be subject to the inspection of the common council or any committee thereof.

§ 7. The common council of said city shall have power and it shall be its duty, to raise from time to time, by tax, to be levied upon all the real and personal estate in said city which shall be liable to taxation for city and county charges, in like manner as other city taxes are raised, such sums as may be determined and certified by said board of education to be necessary and proper for any and all of the following purposes:

1. To purchase, lease or improve sites for school-houses, or sites with buildings thereon for the same purpose;

2. To build, purchase, lease, enlarge, alter, improve and repair school-houses, and their out-houses and appurtenances;

3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages; but the power herein granted shall not be deemed to authorize the furnishing with class or text books any scholar whose parents or guardian shall be able to furnish the same;

4. To procure fuel and defray the contingent expenses of the common schools, including the academical department therein and the expenses of the school library of said city, and the necessary contingent expenses of said board, including the salary of the secretary of the board, and the compensation allowed to the assistant librarians;

5. To pay teachers' wages, after the application of public moneys which may by law be appropriated and provided for that purpose;

6. The amount raised for teachers' wages and contingent expenses shall not exceed the sum of ten thousand dollars in any one year: nor shall there be raised in any one year, for buying sites, or sites with buildings thereon, erecting and repairing school-houses and the appurtenances, a sum exceeding two thousand dollars, except as herein otherwise provided for. And the common council is authorized and directed to borrow, upon the promissory note of the city in anticipation of the amount to be raised by tax as aforesaid, such sums as the board of education shall from time to time certify is required by it.

§ 8. All moneys to be raised pursuant to the provisions of this title and all school moneys by law appropriated to or provided for said city, whether from the school or literature funds, or under the act to establish free schools throughout the State, or otherwise, shall be paid to the treasurer of said city, who, together with the sureties on his official bond, shall be accountable therefor in the same manner as for other moneys of said city. The said treasurer shall be liable to the same penalties for official misconduct in relation to the said money as for any similar misconduct in relation to other moneys of said city.

§ 9. All moneys required to be raised by virtue of this act, or received by said city for the use of the common schools therein or of the academical department hereinafter mentioned, shall be deposited for the safe keeping thereof with the treasurer of said city, to the credit of said board of education, until drawn from said treasurer as hereinafter provided for: and the said treasurer shall keep the fund authorized by this act to be received by him separate and distinct from any other funds which he is or may by law be authorized to receive.

§ 10. The treasurer shall pay out the moneys authorized by this title to be received by him upon drafts drawn by the president and countersigned by the secretary of said board of education, which drafts shall not be drawn except in pursuance of a resolution or resolutions of said board, and shall be made payable to the person or persons entitled to receive said money.

§ 11. The said board shall have power, and it shall be its duty:

1. To organize and establish such and so many schools in said city as they shall deem requisite and expedient, and to alter and discontinue the same;

2. To purchase and hire school-houses and rooms, lots or sites for school-houses, or sites with buildings thereon, to be used as school-houses, and to fence and improve such sites as it may deem proper;

3. Upon such lots and upon such sites, owned by said city, to build, enlarge, alter, improve and repair school-houses, out-houses and appurtenances, as it may deem advisable;

4. To have the custody and safe keeping of the school-houses, out-houses, books, furniture and appurtenances, and to see that the ordinances of the common council in relation thereto be observed;

5. To contract with, license and employ all teachers in said schools and the academical department therein, and at its pleasure to remove them;

6. To pay the wages of the teachers in said schools out of the moneys appropriated and provided by law for the support of common schools in said city, and the wages of the teachers of the academical department out of the moneys appropriated to said department from the income of the literature and United States deposit funds, so far as the same shall be suffi-

cient, and the residue of the wages of the teachers in said schools and academical department from the money authorized to be raised for that purpose, by section seven of this title, by tax upon said city :

7. To defray the contingent expenses of the said common schools and academical department, and the expenses of the school library of said city, and the necessary and contingent expenses of the board, including the annual salary of the secretary of the board and the compensation allowed to the assistant librarians, provided the account of the expenses shall first be audited and allowed by the common council ;

8. To have in all respects the superintendence, supervision and management of the common schools of said city, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, or the reception of pupils and their transfer from one school to another, and generally for their good order, prosperity and utility ; and to have power to establish in said schools an academical department, to receive into said schools or academical department pupils residing out of said city, and to regulate and establish the tuition fees of such non-resident pupils in the several departments of said schools and in such academical department, and to collect such fees in the name of the said city ; to regulate the transfer of scholars from the primary to the academical departments, to direct what text books shall be used in said schools and academical department, to provide and keep in repair school apparatus, books for indigent pupils, furniture and appendages, fuel and other necessities for the schools and academical department ; and to appoint assistant librarians, as they may from time to time deem necessary, and to regulate their compensation ;

9. Whenever in the opinion of the board of education it may be advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the city, to report the same to the common council ;

10. To prepare and report to the common council such ordinances and regulations as may be necessary and proper for the protection, safe keeping, care and preservation of school-houses, lots and sites and appurtenances, and all the property belonging to the city connected with or appertaining to the schools ; and annually, on or before the first day of June in each year, to determine and certify to the said common council the sums in their opinion necessary or proper to be raised under the seventh section of this title for the year commencing on the first day of July thereafter, specifying the amount required for each of the purposes therein mentioned, and the reason therefor ;

11. Between the first day of July and the first day of August, in each year, to make and transmit to the county clerk, or such other officer as may be designated by law, a report in writing, bearing date the first day of July, in the year of its transmission, and stating :

I. The number of school-houses in said city, and an account and description of all common schools kept in said city during the preceding year, and the time they have severally been taught ;

II. The number of children taught in said schools, respectively, and the number of children over the age of four years and under the age of twenty-one years residing in said city on the first day of January in each year ;

III. The whole amount of school moneys received by the treasurer of said city during the preceding year, distinguishing the amount received from the city treasurer from the city tax and from any other sources ;

IV. The manner in which such sums of money have been expended, and whether any, and what part remains unexpended, and for what cause ;

V. The amount of moneys received for tuition fees from foreign pupils during the year, and the amount paid for teachers' wages in addition to the public moneys, with such other information relating to the common schools of said city as may from time to time be required by the State Superintendent of Common Schools.

§ 12. Each school commissioner shall visit all the schools in said city, at least twice in each year of his official term ; and said board of education shall provide that each of said schools shall be visited by a committee of three or more of its number at least once in each term.

§ 13. It shall be the duty of said board, in all its expenditures and contracts, to have reference to the amount of moneys which shall be subject to its order during the then current year for the particular expenditures in question, and not to exceed that amount.

§ 14. The said board of commissioners shall be trustees of the school libraries in said city ; and all the provisions of law which now are or hereafter may be passed, relative to school district libraries, shall apply to said commissioners in the same manner as if they were trustees of a school district comprehending said city ; they shall also be vested with the same discretion, as to the disposition of the moneys appropriated by the laws of this State for the purchase of libraries, which is therein conferred on the inhabitants of school districts. It shall be their duty to provide room or rooms for such libraries, and the necessary furniture therefor. The librarian shall report to the board the condition of the library or the libraries under his charge ; and the said board, or secretary thereof under the direction and by the resolution of said board, may make all purchases of books for said library or libraries, and may direct the mode of their distribution, and may cause to be repaired damaged books belonging thereto, and may sell any book in said library or libraries that may be deemed useless, and apply the proceeds to the purchase of other books for said library or libraries.

§ 15. The title of the school-houses, sites, lots, furniture, books, apparatus and appurtenances, and other school property in this title mentioned, shall be vested in the city of Schenectady, and the same, while used or appropriated for school purposes, shall not be levied upon or sold by virtue of any warrant or execution, nor be subject to taxation for any purpose whatever ; and the said city in its corporate capacity shall be able to take and hold

any personal or real estate transferred to it by grants, gifts, devise or bequest, in trust for the benefit of the common schools of said city or of the academical department therein, whether the same be transferred in terms to said city by its corporate name, or by any other designation, or to any person or persons or bodies for the benefit of said schools or academical department.

§ 16. The common council of said city shall, upon the recommendation of said board of education, sell any of the school-houses, sites, lots or any of the school property now or hereafter belonging to said city, upon such terms as the common council shall deem reasonable; the proceeds of all such sales shall be paid to the treasurer of said city, and shall be, by said board, expended in the purchase, repairs or other improvement of school-houses, lots or school furniture, apparatus or appurtenances.

§ 17. It shall be the duty of said board, at least fifteen days before the annual election for commissioners in each year, to prepare and report to the common council true and correct statements of the receipts and disbursements of moneys, under and in pursuance of the provisions of this title, during the preceding year, in which account shall be stated, under appropriate heads:

1. The moneys raised by the common council under the seventh section of this title;
2. The school moneys received by the treasurer of the city from the county treasurer;
3. The moneys received by the treasurer of the city under the seventh section of this title;

4. All other moneys received by the treasurer of said city, subject to the order of the board, specifying the sources from which they shall have been derived;

5. The manner in which such sums of money shall have been expended, specifying the amount under each head of expenditure; and the common council shall, at least ten days before such election, cause the same to be published in all newspapers of said city.

§ 18. The common council shall have power, and it shall be its duty, to pass such ordinances and regulations as the said board may report as necessary for the protection, preservation, safe keeping and care of the school-houses, lots, sites, appurtenances and appendages, libraries and all necessary property belonging to or connected with the schools of said city, and to impose such penalties for the violation thereof as the common council are authorized to impose by this act; and when collected to be paid to the treasurer of the city, to the credit of the said board of education, and shall be subject to its order in the same manner as other moneys raised pursuant to the provisions of this title.

§ 19. It shall be the duty of the clerk of said city, immediately after the election of any person as commissioner of common schools, personally or in writing to notify him of his election; and if any such person shall not, within ten days after receiving such notice of his election, take and subscribe the constitutional oath, and file the same with the clerk of said city, the common council may consider it as a refusal to serve, and proceed to supply the vacancy occasioned by such refusal, and the person so refusing shall forfeit and pay to the city treasurer, for the benefit of the schools of said city, a penalty of ten dollars.

§ 20. Every academical department to be established as aforesaid shall be under the visitation of the Regents of the University, and shall be subject, in its course of education and matters pertaining thereto (but not in reference to the buildings or erections in which the same is conducted, unless in case the buildings or erections aforesaid are separate from those of the common school department), to all the regulations made in regard to academies by the said Regents; and in such department the qualifications for the entrance of any pupil shall be the same as those established by the said Regents for admission into any academy of the State under their supervision. And such academical department shall share in the distribution of the income of the literature fund, and of the income of the United States deposit fund, with academies in the State subject to the visitation of the Regents.

§ 21. The said board of education shall have power to purchase, in the corporate name of the city of Schenectady, from the trustees of Union college, and the said trustees of Union college shall have power to sell and convey to said city, the building called the west college, and the buildings connected therewith, and the site on which they stand, situate on Union street, in said city, and lying between College street and the Erie canal and the New York Central railroad, for the use of the said common schools and academical department, and upon such trusts and upon such terms, and subject to such conditions, as shall be agreed upon by and between the said board of education and the said trustees of Union college; and said buildings and premises, after the same shall be conveyed to the city of Schenectady, in pursuance of such agreement, shall be held by said city for such uses and purposes, and upon such trusts and subject to such conditions, as shall be so agreed upon, and as shall be specified in the deed of conveyance. The preceding provisions of this title in relation to the purchase of school-houses, sites and lots, and other real property, and to the taking, holding, disposition and sale of the same, so far as the same are inconsistent with this section, shall not be applicable to the purchase, sale and conveyance authorized in this section.

§ 22. The said board of education and the said trustees of Union college shall have power from time to time to enter into such contracts as they may deem expedient, in relation to the organization, superintendence and management of the said academical department, the prescribing the course of studies and system of discipline, and the appointment and payment of the professors and teachers in such academical department; and, also, in relation to the terms upon which the pupils in said academical department may receive books from the libraries of Union college, or attend the lectures of the professors in said college, or be admitted, when prepared, as members in full standing of its several classes. Such contract, when entered into, shall be binding on said board of education and the said trustees of Union college, and shall be faithfully executed. The preceding provisions of this title, in relation to the powers and duties of said board of education in reference to the academical

department, shall be deemed modified by this section, and such powers and duties shall be exercised only in conformity to the contracts which may be entered into under this section.

§ 23. This title shall extend over and be applicable to all the territory lying within the corporate limits of the said city; and the office of town superintendent of common schools, so far as it is applicable to the said city of Schenectady, is hereby abolished.

§ 24. This act shall take effect immediately, and all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

# SCHROEPPPEL.

[*Chap. 458, Laws of 1865, p. 826.*]

SECTION 1. All that part of the town of Schroeppele now included in the village of Phoenix, and all that shall hereafter be added thereto, and all the territory now included in what is known as school district number twelve, shall hereafter form but one school district, to be known as "the Phoenix free school district," for the purposes and to the extent in this act specified.

§ 2. The following named persons, to wit: John N. Gillis, Edmund Merry, Gouverneur M. Sweet, Alfred Morton, Mathew S. Cushman and Enoch S. Brooks, and their successors in office, to be chosen as hereinafter provided, are hereby constituted a corporation by the name of the "board of education for the Phoenix academy and free school."

§ 3. Two of said persons shall hold office until January first, eighteen hundred and sixty-six, two until January first, eighteen hundred and sixty-seven, and two until January first, eighteen hundred and sixty-eight, and the persons holding such terms shall be designated by lot on the first meeting of said board of education.

§ 4. The annual meeting of the electors of said free school district shall be held on the second Tuesday in October in each year, at such hour and place in said district as the board of education shall designate. The president of the board of education, or, in his absence, the president for the time being, shall preside, and the clerk, or, in his absence, the clerk for the time being, shall act as secretary thereof.

§ 5. At the annual meeting to be held in the year one thousand eight hundred and sixty-five, two members of the board of education shall be elected to fill the places of the two persons first named in section three of this act. The places of the next two shall be filled at the annual meeting to be held in the year one thousand eight hundred and sixty-six, and annually thereafter, on the second Tuesday of October, there shall in like manner be elected two members to fill the places of those whose terms of office shall next thereafter expire. Every officer elected under this act shall enter on the duties of his office on the first Monday of January next succeeding his election, and shall continue in office for the term of three years. At the first regular meeting of the board of education after any such election, the clerk shall certify to the board the names of the officers so elected.

§ 6. Said board of education shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of the provisions of this act, and a majority of the board shall form a quorum.

§ 7. At the first regular meeting of the board of education, held in January in each year, they shall appoint a clerk, librarian, collector and treasurer of said district, the last two of whom shall each, within twenty days after receiving written notice of his appointment, and before entering upon the duties of his office, execute and deliver to said board of education a bond in such penalties and with such sureties as the said board may require, conditioned for the faithful discharge of the duties of his office.

§ 8. In case of a vacancy in any elective office mentioned in this act, occasioned by the death of such officer, his removal from the district, refusal to serve, his incapacity, or any cause other than the expiration of the term of office of persons so elected, said board of education may make an appointment to fill such vacancy. The officer so appointed shall hold his office until the next annual election, when the inhabitants shall fill such vacancy by an election for the unexpired term thereof.

§ 9. Notices for annual meetings and all other meetings of said district shall be given by the board of education at least ten days before such meeting, by publishing such notice once in each of the newspapers printed in the village of Phoenix, and by posting the same on the door of each school-house in said school district.

§ 10. Said board of education, and the clerk, the librarian, and the collector of said district, shall severally possess all the powers and be subject to all the duties and liabilities in respect to all the schools in said district, that the trustees and other officers of common schools now possess or shall be subject to by law, and such other powers and duties as are given or imposed by this act.

§ 11. From and after the first meeting of the board of education under this act, the offices of trustees, librarian, clerk and collector in each of the school-districts included within the limits of the said free school district shall cease, and the title of the property of the said school districts, real and personal, shall from thenceforth become the property of, and be vested in, the said board of education in its corporate capacity, as created by this act; and said board shall settle all business of the school districts forming said free school district then remaining unsettled.

§ 12. The said board of education shall, at their said first meeting, and uniformly thereafter at their meeting to be held next after the first Monday of January, in each year, appoint one of their number president. The clerk of said district shall act as secretary to

said board. In the absence of either of said officers at any regular meeting of the board, a president and secretary may be appointed for the time being.

§ 13. The said clerk, in addition to such other duties as are or may be imposed on him by law or required of him by the board, shall keep a record of the proceedings of said board of education, which record, or a transcript thereof certified by the president and secretary, shall be received in all courts and for all purposes as presumptive evidence of the facts therein set forth.

§ 14. The said board of education shall have power and it shall be their duty:

1. To establish and organize a classical school in the village of Phenix, to be known by the name of "the Phenix academy," which school shall be subject to the visitation of the Regents of the University of this State and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies and to share in the distribution of the moneys of the literature fund of this State the same as the other academies thereof;

2. To establish and organize such and so many primary and intermediate schools or departments in said district, including for that purpose the common schools therein, as they shall deem requisite and expedient, and to alter and discontinue or change and consolidate the same;

3. To build, purchase or hire school-houses, rooms, lots or sites for school-houses, and to fence, improve, adorn and repair the same as they may think proper;

4. Upon such lots or sites, and upon any lots or sites, now owned by any school district, within the limits of said district erected by this act, to build, enlarge, alter, improve, adorn and repair school-houses, out-houses and appurtenances as they may deem advisable;

5. To purchase, exchange and improve and repair school apparatus, globes, maps, furniture and appendages, books for indigent pupils, and for the school library, to provide fuel and lights and defray the contingent expenses of the schools, of the board, the library, and to pay the salary of the librarian and clerk;

6. To have the custody and safe keeping of the school-houses, out-houses, and all the real and personal property belonging or which shall belong to said district and primary schools, and to see that the ordinances and by-laws of said board in relation thereto be observed;

7. To contract with and employ teachers competent and legally qualified in the several departments of instruction, to remove them at any time for neglect of duty or immoral conduct, and to pay the wages of such teachers out of the moneys appropriated for that purpose;

8. To pay the wages of such teachers out of the public moneys and tuition fees received for that purpose, and the deficiency, if any, out of the moneys to be raised by tax for general purposes of education under this act;

9. To fix the rates of tuition fees in said academy and to designate some person or persons to whom the same may be paid;

10. To have in all respects the superintendence, supervision, management and control of all the schools mentioned or contemplated in and by the provisions of this act, to prescribe the course of studies therein, the books to be used, and to establish a uniformity in respect to such courses of study and books, from time to time to adopt, alter, modify and repeal, as they may deem expedient; rules, regulations and ordinances for the organization, government and instruction of such schools, for the reception of pupils and their transfer from one school to another, for the expulsion of any pupil from any of said schools for misconduct, for the promotion of morals and good order in said schools, their prosperity and public utility, for the protection, safe keeping and care and preservation of school-houses, lots, sites, fences, ornamental trees, and shrubbery, and other appurtenances, and all other property connected with or appertaining to such school-houses, and to cause such rules, regulations, ordinances and by-laws to be printed and published in such a manner as they may deem best calculated to give general information thereof;

11. The said board of education shall have power and it shall be their duty to raise, from time to time, by tax upon all the real and personal estate within the bounds of said district which shall be liable to taxation for town and county charges, such sums of money as may be determined by resolution of said board to be necessary for any and all the purposes mentioned in this act, or to meet any deficiency for any purpose of education in said district, to provide for which power is hereby given to said board by the provisions of this act, or any law relating to common schools, or the rules, regulations, or any order of the Superintendent of Public Instruction;

12. Said board of education shall, at the commencement of each year, make an estimate, by the best means in their power, of the amount of money which will be needed for all the purposes of education and other purposes provided for by this act, over and above the public money and moneys to be received from the other sources, if any, and shall cause the same to be raised upon one assessment or warrant, and not more than two taxes for such purpose shall be raised in one year.

The amount of money so to be raised for teachers' wages, to be raised in any one year, shall not be less than the amount received from the State for the support of said schools for the year next preceding, nor shall more than four times that amount be raised by the board of education for any purpose, unless such greater amount shall be authorized by a vote of the voters at school meetings of said school district, at an annual or special meeting of such district, when they shall have power to vote such sum or sums as they may deem necessary for such purposes.

§ 15. All the primary and intermediate schools and departments, and the academy in said school district, and which shall be under the charge of the board of education, shall be free schools, and no tuition shall be charged, nor any rate bill made out for the tuition in the regular or prescribed course of study of any pupils of lawful school age, who are or may be actual residents of said free school district, but said board of education shall have power

to establish or charge such rates of tuition as they shall see fit for non-resident pupils, and for the instruction of all pupils in any branch of learning not embraced in the regular course of study prescribed by said board of education.

§ 16. They shall, for all taxes raised by them, make out a list in the manner and form in which tax lists are or shall be required by law to be made by trustees of school districts, so far as such form is applicable, annex thereto a warrant in like form signed by the president or majority of the members of said board, and deliver the same to the collector, which when so made and signed, shall be as effectual to all intents and purposes as like tax lists and warrants, when made by the trustees of common school districts in this State. Said board may, in respect to the collection of taxes, conform to the provisions of the twenty-ninth, thirtieth and thirty-first sections of chapter one hundred and eighty of Session Laws of one thousand eight hundred and forty-five, and require the collector to comply with the provisions of said section so far as the same are applicable. Said board may make their warrants returnable at discretion, not less than thirty nor more than ninety days from the issuing thereof. The said board may assess, levy and collect the amount of taxes to be raised under the preceding sections in not more than two annual installments.

§ 17. All moneys to be raised by virtue of this act, and all moneys by law appropriated to or provided for said district, shall be paid the treasurer of said board, who, together with the sureties on his official bond, shall be accountable therefor to the said board of education; said treasurer shall not pay out any of such moneys except in accordance with a resolution of said board, and upon an order drawn by the president and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 18. Special meetings of the board of education may be called by the president, or, in his absence or inability to act, by the secretary or any member of said board, as often as necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his place of residence at least twenty-four hours before the hour for such special meeting. No member of said board shall receive, directly or indirectly, any pay or compensation for his services.

§ 19. The said board of education shall annually make a like report in all respects as required from trustees of common school districts to the school commissioner. Such report shall be received by the school commissioner instead of the reports now made by trustees of the school districts included in the said union district.

The school moneys received for said district by the supervisors shall be paid by the said supervisors to the treasurer of said board of education. A copy of the reports of said boards of education shall be filed with the clerk or secretary of the board. The board of education shall, at the close of each school year, publish, in one or more of the village newspapers, a report of the moneys received and expended by them during the year, showing the sources from whence received and the objects of expenditure, and such other matters pertaining to public instruction in said district as they shall deem expedient.

§ 20. Whenever, in the opinion of said board, a sale or exchange of any primary school-house or house and lot would be proper, said board may cause such sale or exchange to be made, and may buy a new site, or may at any time build a new school-house for the accommodation of any portion of said district when authorized thereto by a vote of a majority of the tax payers of said district, present and voting at any annual or special meeting called together as herein provided.

§ 21. All the school property of said board of education, real and personal, while used for and appropriated to school purposes, shall be exempt from all taxes and assessments, and shall not be liable to be levied upon or sold by virtue of any execution. Said board of education, in their corporate capacity, shall be able to take, hold and dispose of any real or personal estate, transferred to it by gift, grant, bequest, or devise, for the use of said district or any schools under their charge. Said board shall not have power to sell, grant, dispose of or incur said academy or school lots. No portion of the library money paid to said board of education shall be expended for teachers' wages, but shall be appropriated exclusively for the increase and benefit of the library and for school apparatus.

§ 22. All the lands included in the bounds of said district shall be subject to taxation therein under this act, without regard to the residence of the owners thereof, and the board of education may cause them to be returned to the county treasurer in the same manner as the trustees of common schools are authorized to return unoccupied and unimproved real estate of non-residents of their districts for unpaid taxes assessed thereon. Said county treasurer shall pay to the treasurer of said board the amount of said taxes out of any moneys in the county treasury not otherwise specifically appropriated, and such proceedings in all respects shall thereupon be had in relation to such taxes and lands as required by law in relation to such lands when so returned by trustees of common school districts.

§ 23. The taxes imposed by the provisions of this act shall be a lien upon the lands taxed, to be enforced and collected by sale in the manner that county taxes are, upon a return to be made by the collector to the treasurer of the county of all unpaid taxes in said district.

§ 24. The board of education of said district is hereby empowered, and it shall be their duty at their first regular meeting after the passage of this act, to levy a tax in accordance with the twelfth article of the fourteenth section of this act, for the support of the schools in said district, for the current school year, and to settle and pay all demands and accounts of the old school district.

§ 25. The district hereby created shall, except as hereinbefore specially provided, be possessed of all the powers and be subject to all the provisions of chapter five hundred and fifty-five, of the Laws of eighteen hundred and sixty-four, so far as the same are applicable thereto.



SENECA.

[*Laws of 1844, chap. 175.*]

SECTION 1. It shall be lawful for the trustees of school district number one, in the town of Seneca, in the county of Ontario, at the next annual meeting of the district after the passage of this act, to submit for the consideration of such meeting a proposition graduating the rates of tuition to be paid by scholars attending the different departments into which such school is now divided; if the same is approved or shall be so amended as to be approved by a majority of those present, qualified to vote in such meetings, such rates may be charged and collected, but they shall not be raised during the year next following their adoption.

§ 2. At any annual meeting of the district, after such rates of tuition have been adopted, the same may be raised, reduced or entirely abolished, by a majority of such meeting.

[*Laws of 1853, chap. 252, as amended by chap. 357 of 1855.*]

SECTION 1. The inhabitants of school district number one, in the town of Seneca, in the county of Ontario, shall, at the next election of a trustee of said district, and at each annual election thereafter, elect a trustee, who shall hold his office for five years, and until another trustee is elected in his place, making the whole number of trustees thereof five.

§ 2. At the annual election of said district to be held in the year one thousand eight hundred and fifty-six, said district number one shall, in addition to the election of a trustee to fill the vacancy which will then occur, also elect a trustee, who shall hold his office for two years, and shall also elect a trustee who shall hold his office for three years, and until others are elected in their places.

§ 3. The said trustees may, whenever they deem it necessary, call district meetings for the transaction of any business relating to said district, by publishing a notice of such meeting in any two of the public newspapers of the village of Geneva, or if there be but one such newspaper, then in such newspaper once in each week for two weeks in succession, and by posting a copy of such notice in three public places in said district, fourteen days before such meeting shall be held; such notice shall contain the time and place of said meeting, and state the purpose thereof, and be signed by at least three of said trustees; and the meeting held in pursuance thereof shall have all the powers and authority of a regular meeting of said district.

§ 4. The said trustees or their successors are hereby authorized to employ a clerk, or such other official labor, counsel or assistant in and about the business and affairs of the district, at such salary as a majority of the legal voters of said district at any meeting thereof shall determine, which salary may be raised by a tax upon the inhabitants of said district. The said trustees may also, with the concurrence of a majority of the legal voters at any meeting of said district, raise by tax a sufficient sum for the purpose of insuring the property of the district against loss by fire, and also for the payment of a salary to the librarian of said district.

§ 5. The said trustees are hereby authorized to raise by tax a sufficient sum to pay the interest which has accrued or may hereafter accrue on the sums now voted by said district, to be paid by installments; and they may hereafter, at any meeting regularly called, raise by tax upon the inhabitants of said district, whenever a majority of the legal voters thereof at such meeting shall so determine, any moneys for the purposes of said district, subject, however, to the consent of the Superintendent of Public Instruction, to be expressed in writing, which consent shall be filed in the office of the town clerk of said town of Seneca.

§ 6. The trustees of said district shall have authority to make regulations respecting the attendance of the children of the district in the school-houses thereof, the transfer of them from one school-house to another, and the instruction and studies to be given and pursued in the schools thereof.

§ 7. The inhabitants of said district, authorized to vote as aforesaid, shall at the first district meeting duly held for the election of officers, and every third year thereafter, and as often as the office becomes vacant, elect a suitable person treasurer of said district, who shall hold his office for three years and until a successor is elected or appointed in his place, unless sooner removed by the trustees of the district for misconduct in office; to make which removal for that cause the trustees are hereby authorized, in which case and in case of a vacancy they may appoint a treasurer in his place. The person so elected or appointed treasurer shall give a bond to the trustees and their successors, by the name of the Geneva union school, with sufficient sureties, for the faithful discharge of his duties. The amount and form of such bond and the sufficiency of the sureties shall be settled and determined by the trustees. Such treasurer shall receive, keep and disburse the moneys of the district, under the direction of the trustees.

§ 8. The said trustees and their successors in office are hereby created a body corporate, by the name of "the Geneva union school," and empowered to establish and organize a classical school by that name in said district and village of Geneva, which school shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to incorporated academies thereof, and shall be entitled to all the privileges of such academies, and to share in the distribution of the money of the literature fund of this State, as the academies thereof; provided, however, that this act shall not affect the rights and duties of said trustees and district under the statutes of this State relating to common schools.

## SENECA FALLS.

[*Chap. 389, Laws of 1867, p. 924, vol. 1.*]

SECTION 1. School districts number one, two, three and eight, of the town of Seneca Falls, are hereby consolidated into one school district, to be known as the educational district of Seneca Falls.

§ 2. The public schools within the said educational districts shall be under the exclusive charge of a board of education consisting of seven members, of which the president of the village of Seneca Falls shall be one, and the said board shall be known and designated as the board of education of Seneca Falls.

§ 3. The said board of education of Seneca Falls shall be a body corporate, with all the powers of school trustees under the union free school law, and all the other general powers of a corporation under the Revised Statutes. Josiah T. Miller, Simeon Holton, Burnet B. Boardman, Gilbert Wilcoxon, John Cuddeback and Oliver S. Latham, together with the president of the village of Seneca Falls, shall constitute the said board until the second Monday in April, eighteen hundred and sixty-eight.

§ 4. At the first annual town meeting held in said town of Seneca Falls, next after the passage of this act, the qualified electors of said town residing within the limits of said educational district shall elect six members of said board of education; and at each subsequent town meeting two members shall be elected; each elector voting at such first election shall designate on his ballot one person for one year, one for two years, and one for three years; and the two persons for each term having the highest number of votes shall be declared elected, and shall hold their office for the time specified; term commencing on the second Monday in April next after such election. At each subsequent election, each elector shall vote one name, and the two highest shall be elected and shall hold their office for three years. The officers holding such town meeting shall provide a separate box for ballots for "board of education;" and they shall designate one of their number to receive the ballots, and they shall conduct the election in all other respects as that for the election of town officers. The clerk of the board of education shall keep the poll list of the district. Every person elected a member of the board of education shall be notified of his election by the town clerk, and shall take and file with the said town clerk the usual oath of office within ten days after receiving personal notice of such election within said town. Vacancies in the board shall be filled for the unexpired term by a two-thirds vote of the remaining members of the board, exclusive of the president of the village, and the said members shall vote until a choice is thus made.

§ 5. The said board shall meet for the transaction of business as often as once in three months, and the president may call special meetings by causing a notice thereof to be personally served on each member in said town, at least twenty-four hours before said meeting shall be held. At the first regular meeting of the board next after the second Monday in April, in each year, the said board shall elect one of their number president for the ensuing year. They shall also elect a superintendent of schools, who shall be, *ex officio*, clerk of said board, and chief librarian of said district. The said superintendent shall be under the direction of the board, and they shall prescribe his general duties; and may, in their discretion, allow him an assistant librarian, whose duties and compensation shall be prescribed by the board. In addition to such other duties as may be devolved upon the superintendent by the board, in the visitation of schools, he shall examine the qualifications of teachers, and grant certificates in such manner and form as may be prescribed by the State Superintendent, and which may at any time be revoked by the board of education. The superintendent shall be paid out of the school fund, such salary as the board of education may fix; and he may be removed by a vote of a majority of all the members of said board. The members of said board shall not receive any compensation for services rendered as such members; nor shall they be interested in any contract made with said board for the purchase, sale or repair of any property; nor shall any relative of any member of the board be employed as a teacher in said district, except by a unanimous vote of the board.

§ 6. The said board of education shall have power, and it shall be their duty, to raise, from time to time, by tax to be levied on all the real and personal estate in said educational district, liable to town and county taxes, in the same manner as town and county taxes are raised, such sums as they shall determine to be necessary and proper for the maintenance of the public schools within said district, as free schools; and such additional sum as may be necessary for the purchase of sites, and the building, repairs or equipment of school-houses within said district, and the payment of any interest or principal which shall become due and payable by said district; and the said board of education may make such temporary loans on the credit of the district for the ordinary expenses of the schools as may become necessary in any year, in anticipation of the annual collection of taxes; but the said board shall not be authorized to purchase any site, or construct any building, or to create any debt for the purchase of any new site or the construction or alteration of any building, unless the same shall have been authorized by a vote of the taxable inhabitants of said election district. A meeting of the taxable inhabitants may be called by the said board of education at any time, to take such vote, upon giving at least two weeks' public notice of the time and place and object of such meeting; such notice to be published in each of the weekly newspapers published in said village, and not more than two such meetings shall be called in any one year, and there shall be at least four months between such meetings. The president of the board, or in his absence the president of the village, shall preside at such tax meeting, and the clerk of the village, and the secretary

of the board of education, shall be the clerks of said tax meeting. The resolutions of such tax meetings, declared passed by such presiding officer, and certified by said clerks, shall be conclusive evidence of the action of the taxable inhabitants of said district; and it shall be the duty of said officers to attend said meetings and truly to certify the resolutions thereof. But the aggregate tax for school purposes, levied in said district in any one year, shall not exceed one-half of one per cent upon the taxable property in said district, as the same shall appear upon the last assessment roll filed in said town. Whenever any district tax meeting shall vote to purchase any school site, or to build any school building within said district, and authorize the issue of bonds therefor, the said board of education may issue the bonds of the said district on interest for such an amount, and in such sums, and on such time, as the said tax meeting shall authorize and the said board shall approve. The form of said bonds, and the mode of disposing of them, shall be fixed by said board, and all moneys received thereon shall be held by the treasurer of the village of Seneca Falls as other school moneys are held under this act, subject to the drafts of said board for the purposes for which such bonds shall have been authorized; said bonds shall be signed by the president of said board of education, attested by the clerk and seal of said district, and they shall be countersigned by the president and clerk of the village of Seneca Falls, and they shall be a specific lien and charge upon the school-houses and property, real and personal, of said educational district, and ratably upon all taxable property within said district. The secretary of the board shall keep a record of all the bonds issued under this act, with a brief description thereof. The said bonds shall be numbered, and the record shall show to whom and on what account each bond was issued by said board.

§ 7. The taxes imposed by the board of education shall be collected of the taxable inhabitants of said district upon the warrant of said board, in the same manner as the taxes imposed by the board of trustees of the village of Seneca Falls are collected; and the collection of said district taxes may be enforced in the same manner as such village taxes. The treasurer of the village of Seneca Falls shall be the collector and treasurer of the said educational district; and his jurisdiction shall extend, under this act, to all the territory embraced in the said educational district. The tax to be levied in the said district as aforesaid, and collected by virtue of this act, shall be levied and collected in the same manner, and at the same time, and for the same compensation, that other village taxes are; and the powers, duties and liabilities of the village treasurer and his sureties, shall be the same for the collection of this tax and for the payment of any school moneys held by him as for village taxes; and the board of trustees of said village, in fixing the amount of the treasurer's sureties, shall include the moneys to be received by said treasurer under this act.

§ 8. All moneys raised by virtue of this act, or received from any other source for the use of common, academic or high schools within said district, shall be kept by the said treasurer separate and distinct from any other funds which he is or may be authorized to receive; any increase or interest or profit received thereon shall be added to said funds. The treasurer of the village of Seneca Falls, under the direction of the said board of education, shall draw upon the county treasurer, or other proper officer, for all moneys appropriated to the schools within said district, from the common school, literature or other funds of this State, or of the county of Seneca; and the treasurer is hereby authorized to receive the same for the said educational district.

§ 9. The treasurer shall pay out the moneys received by him, by virtue of this act, only upon drafts drawn by the president of the board of education, countersigned by the secretary of the board, which drafts shall not be drawn except in pursuance of a resolution or resolutions of said board, and shall be made payable only to the order of the person or persons entitled to receive the money thereon, and shall state on what account said draft is drawn: except that said treasurer may take up any lawful bond of said district, at the maturity thereof, or pay any coupon due for interest thereon, without such draft, provided such payment shall have been authorized by a resolution of said board.

§ 10. The said board shall have power, and it shall be their duty:

1. To establish and organize in said educational district so many primary departments or schools, and departments of higher grades, including an academical department, and to alter and discontinue the same, as they may deem advisable;

2. To hire or purchase school-houses, school-rooms, lots or sites for school-houses, or sites with buildings thereon, to be used as school-houses, and to fence and improve such sites, and to sell the same with their appurtenances, as they may deem proper, provided such purchase be authorized by a vote of the district;

3. To build, enlarge, alter, improve and repair school-houses, with their out-houses and appurtenances, as they may deem advisable;

4. To have the custody of the said school-houses, books, furniture and appurtenances, and to see that the ordinances in relation to the care and safe keeping of the same be observed;

5. To contract with, and employ all teachers in said public schools, the number of teachers not to be less than one for every fifty pupils regularly attending such schools;

6. To pay teachers' wages from the money authorized by this act to be raised for that purpose;

7. To defray all necessary and contingent expenses of establishing and maintaining the said public schools with proper furniture, library and apparatus, and the necessary and contingent expenses of said board of education;

8. To have in all respects the superintendence and management of the public schools of said district, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for the organization, government and instruction; for the reception of pupils and their transfer from one department to another, and generally for their good order and government; to receive into said public schools pupils residing out of said educational districts; to regulate the tuition fees of such non-resident pupils, and to collect

the same; to expel any scholar for misconduct or cause injurious to the interests of the school; to regulate the transfer of pupils from one department to another; to direct what text books shall be used in the public schools; to provide and keep in repair school apparatus, books, furniture and appendages; to provide fuel and other necessities for the said public schools, and to appoint assistant librarians, as they may from time to time deem proper, and regulate their duties.

§ 11. The title to the school-houses, lots, furniture, books, apparatus, and appurtenances, and all other school property in this act mentioned, shall be vested in the said board of education, and the same while used or appropriated for school purposes shall not be subject to taxation, and shall not be levied on or sold by virtue of any warrant or execution, except for teachers' wages and the bonds of said district, issued by order of the said board, and except that the lien, and all proceedings for enforcing the same, of mechanics and others for labor and materials furnished in erecting, altering, or repairing buildings and their appurtenances, shall in no way be affected or impaired by this act; and the said board in its corporate capacity, shall have full right and authority to take and hold any personal and real estate transferred to it by grant, gift, devise or bequest, subject to the limitations provided by law, in trust for the public schools or educational interest of said educational district, whether the same be in terms to said board in its corporate name or by any other designation, or to any person, persons or bodies for the benefit of said public schools; and all real or personal estate so transferred shall be accepted, held, used and applied as specified in the article or deed of transfer. Any person willfully injuring any property belonging to or which shall be in the custody of said board of education, shall be liable to punishment as and for a misdemeanor—and doing such willful injury is declared to be a misdemeanor.

§ 12. The said board of education shall once in each year, and at least fifteen days before the annual town meeting, make a report to the inhabitants of the district, in which they shall set forth the whole amount and items of the moneys received, raised and collected by them during the year preceding the date of such report, and the amount and items of the expenditures for the same time, also the number and condition of the various schools and departments in said school district; the number of pupils attending such schools and departments during the year, the number and names of the teachers employed by them, and the text books in use in such schools; the number of volumes and condition of the books in the libraries of said districts; and such other facts and information relative to the affairs of said district as in their judgment may be of interest to the inhabitants thereof; and shall publish such report in the weekly newspapers regularly published in the said village of Seneca Falls.

§ 13. It shall be lawful for the inhabitants of any school district in the town of Seneca Falls, adjoining said educational district, at any annual or special meeting, by a vote of the majority of the legal voters present, to declare said district to be a part of said educational district, and if accepted, the said district shall become a part of said educational district and be subject to all the conditions, rules and regulations of said board of education, the same as any other districts included in the said educational district; but no such action of any school district shall take effect or become operative for any purpose, until said board of education shall by resolution accept such school district as a part of such educational district.

§ 14. The said board of education shall be trustees of the school district libraries of said district, and all the provisions of law which are now in force, or hereafter may be passed, relative to school district libraries, shall apply to said board of education in the same manner as if they were trustees of a school district, so far as the same is or shall be consistent with this act. They shall be vested with the same discretion as to the disposition of moneys appropriated by the laws of this State, for the purchase of libraries, which is therein conferred on the inhabitants of school districts; and they shall have power to purchase, exchange, repair or dispose of any books or other property of said libraries, or cause it to be done, and apply the proceeds to the purchase of other books or apparatus; also to provide suitable rooms and furniture for said libraries.

§ 15. The trustees of the "Seneca Falls academy" are hereby authorized and empowered to transfer to the board of education hereby created, either immediately or at a future time, on such conditions as they jointly shall deem most conducive to the cause of education, the right, title and interest in and to all the estate, real and personal, and all bequests belonging to said academy, to be by them used in the purchase of a site, the erection of suitable buildings, the organization of an academic or high school, or for the maintenance of an academy in connection with the general free school system contemplated in this act. The board of education, if they shall deem it necessary, may, with the advice and consent of the board of trustees, organize and maintain primary, secondary or high schools, or either of them in, or cause them to be taught in connection with the Seneca Falls academy, on such terms and conditions, and for such time as shall be deemed expedient, by and between said board of education and the trustees of such academy.

§ 16. The academy connected with the school system contemplated by this act, when organized, and when it has complied with the necessary requirements, shall be recognized as one of the academies of this State, subject to the visitation of the Regents, and shall be entitled to participate in the distribution of the income of the literature and other funds, in the same manner and upon the same conditions as the other academies of the State; and the Regents of the University of the State of New York shall pay annually to the board of education of Seneca Falls, the distributive share of the said funds to which the said academy shall be entitled.

§ 17. The various school district offices, in each of the districts herein embraced, shall terminate whenever this act shall take effect, and the board of education shall be organized, and shall enter upon the duties of their office, except as herein otherwise provided. The

trustees and collector in each district shall retain the power now by law vested in such officers, until they, by due diligence, shall have closed up all the unsettled business of their several districts, and discharged all the indebtedness thereof, and for such purpose shall, if necessary, call meetings of the inhabitants of such district, and, when voted at a legally called meeting, shall levy and collect a tax sufficient to liquidate such indebtedness. The said school district officers shall severally transfer to the said board of education, all the school property and all the property of their respective districts, on or before the first day of June, eighteen hundred and sixty-seven; and the said board of education shall take possession of the same, except that the property of joint district number two shall be disposed of or divided as is now provided by law on the dissolution of school districts; but the said board of education are authorized, instead of making such division, to make any other settlement or adjustment with the inhabitants of such joint district, not residing within said educational district, as may be acceptable to said board and a majority of said inhabitants, or which shall be accepted and approved by the trustee or trustees of said joint district not residing in the town of Seneca Falls. The said board of education is also authorized to deduct from the first tax levied upon the taxable property of the inhabitants of any school district, by virtue of this act, the amount of money heretofore raised by tax in any such district, which shall be turned over to the said board by the trustees of any district, in pursuance of this act; such deduction to be made ratably from the tax of each of such inhabitants, as the same shall appear upon said educational district tax list.

§ 18. The record of the board of education, or a transcript thereof certified by the secretary, shall be received in all courts as *prima facie* evidence of the facts therein set forth; and such record, the books, accounts, vouchers and papers of the board shall at all times be subject to the inspection of the trustees of the village, or any committee thereof, or the justices of the peace or supervisor of the town.

§ 19. The board of education may cause a suit or suits to be prosecuted in the name of the village of Seneca Falls, upon the official bond of the treasurer of the said village, for any default, delinquency, or official misconduct in relation to the collection, safe keeping and payment of any money in this act mentioned.

§ 20. All acts and parts of acts inconsistent with this act are hereby repealed; and this act shall take effect immediately.

## SING SING.

[Laws of 1854, chap. 314, p. 667, as amended by chap. 199, Laws of 1859, p. 455.]

SECTION 1. The village of Sing Sing shall form a permanent school district, and the electors residing within the bounds of said village, at their annual charter election, or at any time thereafter, upon the usual notice being given, may determine by a majority of votes, by ballot, upon the expediency of establishing free schools in said village. The trustees of the village shall conduct the election, and the ballots having written or printed on them the words "For free schools," or "Against free schools," shall be duly canvassed, and the result declared by them in the usual manner.

§ 2. The trustees of said school district shall be elected in the manner and shall hold their offices for the terms prescribed by the common school law of this State; and upon the decision of the legal voters of said village in favor of establishing free schools, it shall be the duty of the district trustees, on or before the first day of December of each year, to estimate, determine and certify the amount of money, in addition to the funds now provided by law and apportioned to the district, that will be required to support all the schools under their charge; the said amount shall in no case exceed three times the whole amount of funds "for the support of schools" that shall have been apportioned for the year preceding.

§ 3. The supervisor of the town of Ossining shall, on the presentation of the certificate of the said trustees specifying the amount of school moneys necessary to be raised for said district authorized by the preceding section, prepare a separate tax list and assess therein the required amount of school moneys upon the taxable property within the said school district, according to the estimated value thereof in the town assessment roll of that year, and shall deliver such tax list to the town collector of the town of Ossining; and the said sum required to be raised as aforesaid shall be inserted in each year in the supervisor's warrant to the collector of the town of Ossining, which shall authorize and require the said collector to collect the said taxes as the same are assessed in the said tax list, to be delivered to him by the supervisor of the town of Ossining, as aforesaid, and to pay the same over to the trustees of the said school district, within the same time he is required to pay over town and county taxes; and it shall be the duty of the said collector to collect the same with the other yearly taxes, and he shall pay over the whole amount certified to be necessary, exclusive of the fees of collection, to the treasurer of the trustees of said school district, within the time required by said warrant; and any violation or neglect of official duty under this act shall be deemed and is hereby declared to be a breach of his official bond as such collector; and in collecting such taxes, the said collector shall have the same powers he now has in the collection of town and county taxes, and he shall be subject to the same duties and obligations; and the county treasurer of the county of Westchester, upon the complaint of the said trustees, or either of them, shall have the same power to enforce or compel payment by the said collectors of any taxes collected or received by him by virtue of this act, as he now has to compel town collectors to pay over town or county taxes collected or received by them.

§ 4. The town superintendent aforesaid shall have the authority and exercise the duties prescribed in the general school law of this State over the said school district, and shall pay out of the funds paid into his hands by virtue of the preceding section, upon the drafts of the trustees, such sums as may be certified by them to be due to qualified teachers that have been employed by them, and include such payments, with any balances or deficiencies, in his annual report of the schools of his town to the department, and for record; he shall also be authorized, upon a vote of the inhabitants of the district at their annual meeting, or the application of the trustees, to apply the "library money" apportioned to the said district to the purchase of text books and school apparatus until the schools are sufficiently supplied.

§ 5. The district trustees aforesaid shall be authorized to raise by tax, annually, for the purchase of fuel, ordinary repairs and improvement of the school property of the district, a sum not exceeding three hundred dollars; and in case of the enlargement, rebuilding or the erection of new school-houses, the said trustees shall be authorized to levy and raise on the taxable property of the district, with the assent of the school commissioner, the amount required for such object, which sum shall not exceed four times the usual amount authorized by law for building new district school-houses, which amount, so levied, shall be collected as other school moneys are, by the town collector, and paid to the treasurer of said trustees, who shall make an exhibit and statement of all such receipts and expenditures with his other accounts in his book, annually, as required by the school law aforesaid.

§ 6. There shall be, after the establishment of free schools in said village on the preceding plan, no rate-bill for the attendance of scholars or any other exaction whatever made out against or demanded by the trustees of any person sending children to such schools in the village of Sing Sing.

[Chap. 326, Laws of 1857, p. 689, vol. 1.]

SECTION 1. The trustees of the permanent school district of the village of Sing Sing, erected into a free school district by an act of the Legislature, and a vote of the inhabitants of said village, in conformity with the provisions of the first section of said act, are hereby authorized and empowered to borrow a sum of money not exceeding five thousand dollars for the purpose of completing their new central school-house, upon the lot recently purchased; and they are hereby authorized to mortgage said school lot, and improvements thereon, as security for the payment of the money so loaned, in annual installments of not less than five hundred dollars until the same shall be paid.

§ 2. The powers and duties exercised by the trustees of the district in compliance with the provisions of section five of said act, levying the sum of one thousand six hundred dollars per annum, for building a new school-house, are hereby legalized and confirmed; and shall be continued until all the expenses of building and furnishing said school-house shall have been paid and reimbursed. And whenever the building of another school-house shall become necessary, and shall be so determined, by the vote of the inhabitants of said district, then again shall the trustees have the same power to proceed in levying and collecting (and borrowing if need be) in like manner herein provided for the erection of said school buildings, and providing furniture therefor.

§ 3. The third section of said act is hereby amended, so as to authorize and require the town collector to pay over all moneys levied by the town supervisor under the direction and by authority of said act to the treasurer of the trustees of said free school district.

§ 4. The treasurer of the trustees of said school district is hereby required to give a bond with two sufficient sureties, to be approved by the district clerk and president of the village of Sing Sing, in twice the amount of moneys that may come into his hands, in the manner required to be done by the supervisor of towns on receiving school moneys, as provided in the school law of eighteen hundred and fifty-six, and with the same guards and liabilities for its faithful disbursement, and the transfer of any funds or property remaining in his hands, belonging to the district, to his successor at the expiration of his office, or when required by a vote of the district.

## SYRACUSE.

[Laws of 1857, chap. 63, p. 104, title 11, as amended by chap. 133, Laws of 1865, p. 245.]

[Title ten provides for the election of two commissioners of common schools in each of the eight wards of the city, to hold office for two years, but so classified that one shall be elected each year.]

### TITLE XI.—THE BOARD OF EDUCATION.

SECTION 1. The commissioners of common schools shall constitute a board of education of the city. The board shall meet annually, on the second Tuesday after the annual charter election, and appoint a president from their body, and a clerk. A majority shall constitute a quorum, but a less number may adjourn. The president shall have a vote on all questions, and in case of his absence a president pro tempore may be appointed.

The president and clerk shall hold their offices during the pleasure of the board, and the compensation of the clerk shall be fixed by said board.

The clerk shall keep a record of the proceedings of the board, which record, or a transcript thereof certified by the president and clerk, shall be received in all courts as *prima facie* evidence of the facts therein set forth. Such records, and all the books and accounts of the said board, shall at all times be subject to the inspection of the common council and of any committee thereof. The clerk shall perform the duties prescribed by law and such other duties as the board may prescribe.

§ 2. The board of education shall annually report to the common council, on or before the first day of April, after the charter election, a detailed statement of the amount estimated by them to be necessary to be expended by said board, for each of the following purposes, for the current year:

- To defray the expenses of teachers' wages;
  - To procure fuel and defray the necessary expenses of keeping the school-houses in order, exclusive of repairs;
  - To defray the expenses for janitors' services;
  - To defray the expenses of the district libraries;
  - To defray the contingent expenses of the board;
  - To defray the expenses of temporary repairs upon school-houses;
- The amount of moneys on hand and the amount receivable during such year by said board for school purposes, other than from city taxes.

§ 3. Upon the reception of the report, in the last section required to be made, the common council shall proceed to consider the same, and approve, increase or diminish any or all the said estimates, but they shall not diminish the aggregate amount so that the sum to be raised by the city shall be less than twice, nor increase the same so that the sum to be raised by the city shall be more than four times, the amount received during the preceding year from the State for school purposes; and after having fixed the amount to be expended for each and all the purposes mentioned in the last preceding section, the same shall be certified to the board of education, who shall during such fiscal year limit the expenditures for such purpose, so that the same shall not exceed such appropriation, and not lessen the length of the time each school shall be kept in each district. In case a greater sum shall be expended for any purpose than the appropriation, the city shall not be liable for the same, but the members of the board of education voting therefor, or either of them, shall be personally liable therefor to the party entitled to payment.

§ 4. The board of education shall have power, and it shall be their duty, subject to the provisions of this act:

- To have the care and custody and provide for the safe keeping of school-houses, out-houses, books, furniture and appendages, and the district libraries in said city;
- To contract with, license and employ all teachers of the several public schools therein;
- To contract for purchasing sites, and for building, enlarging and furnishing, all school-houses authorized by the common council and to superintend the same;
- To contract for the temporary repairing of all school-houses, and for all repairs and improvements around the same;
- To audit accounts and order the payment of the same, if contracted by them for either of the purposes stated in the third section of this title;
- To make all selections of books for the district libraries or for school purposes in said city;

To divide the city into school districts in such manner as they shall deem proper, and regulate and define the boundaries, and the number of teachers for the same; to supply the places and perform the several duties of superintendents of common schools in towns and districts; and, in respect to the several school districts in said city, to supply the place and perform the several duties required to be performed by trustees of the several school districts in this State by the general statutes relating to common schools.

§ 5. At such time as the Superintendent of Public Instruction shall direct returns to be made to him in each year, said board shall make and transmit to the county clerk a report in writing, containing an account and description of all the common schools kept in said city during the preceding year, and the time they have severally been kept; the number of children taught in said schools respectively; the number of children over the age of five and under the age of twenty-one years residing in said city on the first day of January of that year; the whole amount of school moneys received by the treasurer of said city during the year preceding, distinguishing the amount received from the county treasurer, from the city collectors, and from any other source; the manner in which said moneys have been expended, and whether any and what part remains unexpended, and for what cause; the amount of money received for tuition fees from foreign pupils during the year, and the amount paid for teachers' wages in addition to the public moneys, with such other information relating to the common schools of said city, as the Superintendent of Public Instruction and the common council may require. The common council of said city shall have the power, and it shall be their duty, to raise from time to time by tax, upon the real and personal estate of said city which shall be liable to taxation for ordinary city taxes or for county or city charges, in addition to the amount of school moneys now or hereafter appropriated, as provided by law for common schools in said city, such sums as may be determined by the common council to be necessary or proper for any or all of the following purposes, viz.:

- To purchase, lease or improve sites of or for school-houses;
- To build, purchase, lease, enlarge, alter, improve or repair school-houses, and their out-houses and appurtenances;
- To purchase, exchange, improve and repair school apparatus, books, furniture and appendages; but the power herein granted shall not be deemed to authorize the furnishing of class or text books for any scholar whose parents or guardians shall be able to furnish the same;
- To procure fuel and defray the expenses of the common schools and the expenses of the school libraries in the city;
- To pay the wages of teachers, due after the application of the public moneys which may, by law, be appropriated and provided for that purpose; provided, that such tax shall not be laid oftener than once in each year, nor shall the amount to be raised in any one year,

for buying sites and erecting and repairing school-houses and appurtenances, exceed eight thousand dollars.

§ 6. The common council shall cause the amount of the tax, at any time ordered to be raised in pursuance of this act, to be added to the amount which is otherwise authorized by law to be raised by tax in said city: and the common council shall cause the same, with the fees thereon, to be assessed, levied and collected at the same time, and by the same warrant and in the same manner, with the taxes raised for city expenses under and by virtue of the act of incorporation of said city of Syracuse.

§ 7. All moneys required to be raised by virtue of this act, which the board of education is authorized to expend, on being raised as herein provided, with all other moneys received from any source for school purposes, shall be deposited, for the safe keeping thereof, with the treasurer of said city to the credit of the school fund, and shall be drawn out, in pursuance of a resolution or resolutions of said board, by warrants drawn by the clerk of the board, and countersigned by the president thereof, payable to the order of the person or persons entitled to receive such moneys; and the treasurer shall keep the school funds, authorized by this act to be received by him, separate and distinct from any other fund which he is or may by law be authorized to receive. Nor shall any of the moneys belonging to said school fund be paid out by the treasurer, except upon such warrants. Nor shall any part of said school funds be borrowed from said funds, directly or indirectly, by the city, or in any manner transferred to any city fund, but the same shall remain in the treasury, sacredly set apart and dedicated to school purposes, and to be drawn therefrom only for such purposes, and in the manner herein provided.

§ 8. The city of Syracuse shall be taken and deemed a town, for all purposes, in respect to making returns in respect to common schools, and for receiving money for school or library purposes from the State, or other sources, and by virtue of this act it is hereby declared to be a school commissioner district.

[Chap. 92, Laws of 1867, p. 133, vol. 1.]

SECTION 1. The board of education of the city of Syracuse are authorized and empowered to purchase grounds, and erect thereon buildings and fixtures, furnish the same, and supply necessary apparatus, as they may think proper, for the uses of the high school in said city now under their charge. To defray the expense thereof, the common council of said city is authorized and required to issue the bonds of the city, in such sums and at such times as the said board of education may direct, for the purposes aforesaid, to an amount not exceeding seventy-five thousand dollars, and, when properly executed, such bonds shall be negotiated through the tax receiver of said city, at rates not less than the par value thereof, and the proceeds remain in the city treasury, subject to the order of the said board of education, for the purposes aforesaid.

§ 2. Said bonds shall bear seven per cent interest, and the same, with the principal moneys, shall be made payable at such times, at such places and in such manner as the said board shall direct, within periods not exceeding thirty nor less than five years. But no greater amount than ten thousand dollars of principal shall be payable in any one year. The said common council shall include in the annual tax list for said city an amount sufficient to meet the interest and any principal moneys that may fall due in each year, until said bonds, with interest, are fully paid.

§ 3. The tax receiver of said city, or other officer or person into whose custody or under whose control the said bonds or the funds therefrom derived shall come, shall execute and deliver to the mayor of said city, bonds to be approved by said mayor for the faithful discharge of the duties and trusts created by this act, which bonds shall be filed with the clerk of said city before such officer shall enter upon his duties.

## STEPHENTOWN.

[Chap. 46, Laws of 1799, passed March 23, Kent and Radcliff's Revision, vol. 2, p. 251.]

Whereas, it is represented to the Legislature that there is a certain fund given, the interest of which is to be appropriated to the encouragement of schools in that part of Stephentown, in the county of Rensselaer, known by the name of the twelve thousand acres; and the freeholders on said land interested in said fund have by their petition prayed to be incorporated, that they might be enabled to choose trustees for the better management of said fund: therefore,

I. *Be it enacted by the People of the State of New York, represented in Senate and Assembly,* That the freeholders residing on that part of Stephentown known by the name of the twelve thousand acres, are hereby constituted and declared to be one body corporate and politic, in fact and in name, by the name of "the trustees of schools in Stephentown," and by that name they and their successors may forever hereafter have perpetual succession, and shall and may by the same name be persons capable in law to sue and be sued, implead and be impleaded, answering and being answered unto, defend and being defended, in all courts and places whatsoever, and that they and their successors may have a common seal, and may change and alter the same at their pleasure, and shall be in law capable of purchasing, holding and conveying any estate, real or personal, for the use of said corporation; *provided* such estate shall not exceed the sum of three thousand dollars.

II. *And be it further enacted,* That Hosea Moffat, David Gould and Jonathan Niles, shall be and they are hereby declared to be the first trustees for the freeholders of that part of



Stephentown aforesaid, and shall continue to be trustees for the purposes aforesaid until the last Tuesday in May next, and until others shall be chosen in their places; and that it shall and may be lawful for the freeholders residing in that part of Stephentown aforesaid for the time being, to assemble on the last Tuesday of May in each year, at such time of the day and place as the trustees for the time being, or a major part of them, shall appoint by advertisement, and under the direction of said trustees, or such of them as shall be present, who are hereby made inspectors of such election, and then and there, by a majority of voices, to elect three discreet freeholders to be trustees as aforesaid, who shall continue in office until the last Tuesday in May in the next ensuing year, and until others shall be chosen in their places.

III. *And be it further enacted*, That when and as often as any vacancy shall happen by death, removal, resignation, or neglect to serve of any of the said trustees, it shall and may be lawful for one or more of the trustees to notify a meeting of the freeholders aforesaid, for the election of a trustee or trustees to fill such vacancy or vacancies, and that said trustee or trustees shall remain in office during such time as the person or persons in whose place he or they shall be chosen would have done in case such vacancy had not happened, and no longer.

IV. *And be it further enacted*, That the said freeholders, at their annual meeting to be held as aforesaid, and at such other times in the year as the said trustees, or a majority of them, may think necessary to advertise for the purpose, shall be and they are hereby authorized and empowered from time to time to make, ordain, constitute and establish such prudential rules, orders and regulations, as a majority of such freeholders so assembled shall judge necessary and convenient for the better securing to the said corporation the property hereby vested in them, for the more equal distribution of the income of all such corporate property among the schools within the bounds of said corporation, and also for well ordering and regulating the schools in such manner as will best promote the education of children.

[Chap. 505, Laws of 1866, p. 1113.]

SECTION 1. Isaiah B. Coleman, Edwin A. Rollo and Hiram A. Carpenter of Stephentown, in the county of Rensselaer, are hereby appointed commissioners of the school fund of Stephentown, in the county of Rensselaer, and shall hold their offices for the terms following: The said Coleman for the term of one year, from April first, eighteen hundred and sixty-six; the said Edwin A. Rollo for two years from said April first, and the said Carpenter for three years from said April first, and said persons shall severally hold their said offices until their successors severally shall be duly elected and qualified; and they and their successors shall be a body corporate, and have the general powers of a corporation, and shall also have power, and it shall be their duty:

1. To take and hold, for the purposes of said trust, any estate, real or personal, which has or may have been devised or bequeathed, given, granted or conveyed to said town or to the school fund thereof, by whatsoever name or howsoever otherwise the same may have been given, with the same effect as if given to said corporation after this act took effect;

2. To lease any real estate that may belong to such fund, for such time, not exceeding twelve years, and upon such conditions as they shall judge best;

3. To sell the same with the consent of the town in town meeting assembled, for such price and upon such terms of credit as shall appear to them most advantageous;

4. To invest the proceeds of such sales and all the personal estate that may come to their hands, in loans, secured by bond and mortgage on unincumbered real estate, of the value, exclusive of buildings, of double the amount loaned, or in stocks of this State, or stocks, bonds or other obligations of the United States;

5. To purchase any real estate so mortgaged upon a foreclosure whenever they shall deem it for the interest of said fund;

6. To return the amount paid to them for principal upon the like security;

7. To apply the rents and profits of such real estate, and the interest on such loans, to the support of common schools in said town, by paying over to the trustees of the several school districts in said town, in the same manner and at the same time as the public money is apportioned by the superintendent of common schools of the district in which said town is located;

8. To keep a just and true account of the receipts and expenditures of all moneys which shall come to their hands by virtue of his office, in a suitable book or books to be provided by him, and render a just and true account of the proceeds of the sales, and the interest on the loans aforesaid, and of the rents and profits of the real estate aforesaid, and of all other receipts by him and of the expenditures and appropriation thereof by them, and of the vouchers therefor, on the last Tuesday next preceding the annual town meeting in each year, to the board of auditors of town accounts, to be audited and allowed;

9. To deliver over to their successors in office all books, papers and securities relating to the same, at the expiration of their respective offices, and take a receipt therefor, which shall be filed in the clerk's office of said town.

§ 2. Any willful neglect or refusal to perform any duty imposed by law on said commissioners shall be a misdemeanor and punishable as such, and also by a penalty of fifty dollars against any such commissioner so neglecting or refusing, to be sued for and recovered by the superintendent of common schools of the district in which said town is situated, in his name or office.

§ 3. There shall be elected, at the annual town meeting of said town, in eighteen hundred and sixty-seven, a commissioner of said school fund, to hold his office for the term of three years, and annually thereafter a like commissioner shall be elected in the place of the commissioner whose term as aforesaid is about to expire. And in case any commissioner, after he shall have entered upon the duties of said office, shall die, resign or remove from said

town, it shall be lawful for the supervisor and any three justices of the peace of said town, to assemble in joint meeting, and by appointment under their hands, or the hands of a majority of those present, fill said vacancy till a successor shall be elected and qualified as aforesaid, which shall be done at the next annual town meeting; and any person elected to fill a vacancy shall hold his office only for the remainder of the term.

§ 4. Before any commissioner, elected or appointed as aforesaid, shall enter upon the duties of his office, he shall execute a bond with sureties to the satisfaction of the supervisor of said town, to be signified by his approval to be indorsed on the same, in the penal sum of at least twice the amount of the estate belonging to said fund, conditioned that such person shall faithfully execute the duties of said trust, and shall pay, according to law, all moneys which shall come to his hands as commissioner, and render a just and true account thereof to the board of auditors of said town.

§ 5. The said commissioners shall not charge or receive any sum or allowance for their services, but the actual and necessary expenses of said commissioners shall be a town charge, and shall be audited by the board of town auditors, and paid as other town charges.

§ 6. Nothing in this act contained shall affect the funds or the control thereof now in the custody of said town, or held by the authority thereof, and belonging to the present school fund of said town.

## TROY.

[*Laws of 1849, chap. 198, as amended by chap. 47 of 1851, chap. 366 of 1851, chap. 81 of 1854, and chap. 695, of 1865, p. 1409.*]

SECTION 1. Each public school at present existing, or which may hereafter be maintained in the city of Troy, shall constitute a school district, under the supervision and direction of the board of education of said city, and the schools therein shall be free to all children between the ages of four and twenty-one years residing in such wards.

§ 2. There shall be erected in each of the said wards, as hereinafter provided, one or more school-houses of size and form sufficient to accommodate all the children between the aforesaid ages residing in such wards. The purchase of sites for school-houses shall be agreed upon in joint committee of three from each board hereinafter mentioned; and in case of disagreement the decision shall rest with the common council.

§ 3. The title of the school-houses, sites, lots, furniture, books, apparatus and appurtenances, and all other school property in this act mentioned, shall be vested in the city of Troy, and the same, while used or appropriated for school purposes, shall not be levied upon or sold by virtue of any warrant of execution, nor be subject to taxation for any purpose whatever; and the said city in its corporate capacity shall be able to take, hold and dispose of any real or personal estate, transferred to it by gift, grant, bequest or devise, for the use of the common schools of the said city, whether the same shall be transferred in term to said city by its proper style or by any other designation, or to any person or persons or body for the use of said schools.

§ 4. The common council of said city may, upon the recommendation of the board of education hereinafter mentioned, sell any of the school-houses, lots or sites, or any other school property now or hereafter belonging to said city, upon such terms as the said common council may deem reasonable. The proceeds of all such sales shall be paid to the chamberlain of the city, and shall be by the said board of education again expended in the construction, repairs or improvements of other school-houses, lots, sites or school furniture, apparatus or appurtenances.

§ 5. [Relates to the number and election of commissioners. As amended by chapter 186 of the Laws of 1851, it provides for the election of two commissioners from each ward, except the 5th, 6th and 9th, which have but one each.]

§ 6. Within ten days after their election, as in the last section mentioned, said commissioners, so elected from those wards in which more than one commissioner is elected, shall meet at the office of the clerk of said city, and shall determine by lot which of the two persons so elected for each ward shall serve for the term ending on the second Tuesday of March, 1851, and which for the term ending on the second Tuesday of March, 1852.

§ 7. In each year thereafter there shall be elected in said city, at the annual charter election, in the same manner and under the same regulations as other ward officers are elected, one commissioner of common schools for each ward, to supply the places of those whose terms are about to expire. The term of office of all commissioners elected pursuant to this act shall commence on the Tuesday next after their election, and shall continue two years. The number of commissioners of common schools in the city of Troy shall always be the same as the number of aldermen in said city.

§ 8. The common council of said city, upon the nomination of the board of education, may make appointment of commissioners of common schools to fill vacancies which may occur from any cause other than the expiration of the term of office of those elected; and the removal from the ward for which he was appointed or elected, and neglect to attend three meetings of the board, unless under circumstances which shall be sustained by the board, shall be deemed a resignation of his office by any commissioner. The commissioners so appointed shall serve out the unexpired term of the commissioners whose places they were appointed to fill.

§ 9. Any commissioner of common schools in said city may be removed from office, for official misconduct, by the common council of said city, by a vote of two-thirds of the members thereof; but a written copy of the charges against said commissioner shall be served

upon him, and he shall be allowed an opportunity to refute any such charge of misconduct before removal.

§ 10. The commissioners of common schools in said city shall constitute a board to be styled the "board of education of the city of Troy," which shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of this act. A majority of the board shall form a quorum. The first meeting of the board shall be on the second Wednesday next after their election, and the annual meeting of the board thereafter shall be on the second Wednesday next after their election. At the first meeting of the board, and annually thereafter, at the annual meeting, they shall elect one of their number president of the board; and whenever he shall be absent a president *pro tempore* may be appointed. The said commissioners shall receive no compensation for their services.

§ 11. The said commissioners shall appoint a clerk, who may be one of their number, who shall devote his whole time to the interests of the schools, and hold his office during the pleasure of the board. His compensation shall be fixed by them. The said clerk shall keep a record of the proceedings of the board, and perform such other duties as the board may prescribe; the said record, or transcript thereof certified by the president and clerk, shall be received in all courts as *prima facie* evidence of facts therein set forth; and such records, and all the books, accounts, vouchers and papers of said board, shall at all times be subject to the inspection of the common council and of any committee thereof.

§ 12. The common council of said city shall have the power, and it shall be their duty, to raise from time to time by tax, to be levied equally upon all the real and personal estate in said city which shall be liable to taxation for the ordinary city taxes or for city or county charges, such sum or sums of money, as may be necessary or proper for any or all the following purposes:

1. To purchase school-houses, and also to purchase, lease or improve sites therefor;
2. To enable the board of education to build, lease, enlarge, alter, improve and repair school-houses, and their out-houses and appurtenances;

3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages; but the power herein granted shall not be deemed to authorize the furnishing with class or text books any scholar whose parents or guardian shall be able to furnish the same;

4. To procure fuel and defray the contingent expenses of the common schools, and the expenses of the school libraries of said city;

5. To pay the wages of teachers due after the application of the public moneys which may by law be appropriated and provided for that purpose; provided, nevertheless, that the tax to be levied as aforesaid, and collected by virtue of this act, shall be collected at the same time and in the same manner as other city taxes;

6. And the amount to be raised for teachers' wages and contingent expenses in any one year shall not be less than twice nor more than four times the amount apportioned to said city from the common school fund of the State during the previous year; nor shall the amount to be raised in any one year, after the first Tuesday in March, one thousand eight hundred and fifty-one, for purchasing sites and erecting and repairing school-houses, exceed ten thousand dollars, unless, in the opinion of the common council, a larger sum should be required to meet unforeseen contingencies. And the common council of said city are authorized and directed, when necessary, to raise by loan, in anticipation of the taxes, the moneys so to be raised, collected and levied as aforesaid.

§ 13. All moneys to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to or provided for said city, shall be paid to the chamberlain thereof, who, together with the sureties upon his official bond, shall be accountable therefor, in the same manner as for other moneys of said city; and the said chamberlain shall be liable to the same penalties for any official misconduct in relation to the said moneys, as for any similar misconduct in relation to other moneys of said city.

§ 14. The said board shall have power, and it shall be their duty:

1. To establish and organize, in the several wards of said city, such and so many schools (including the common schools now existing therein) as they shall deem requisite and expedient, and to alter and discontinue the same;

2. To build, lease or contract for the occupation and use of school-houses and rooms, and to improve the same as they may deem proper;

3. To alter, improve and repair school-houses and appurtenances, as they may deem advisable;

4. To purchase, exchange, improve and repair school apparatus, books for indigent pupils, furniture and appendages, and to defray their contingent expenses, and the expense of the school libraries;

5. To have the custody and safe keeping of the school-houses, out-houses, books, furniture and appendages, and to see that the ordinances of the common council in relation thereto be observed;

6. To contract with, license and employ all teachers in said schools, and at their pleasure to remove them;

7. To pay the wages of such teachers out of the moneys appropriated and provided by law for the support of schools in said city, so far as the same shall be sufficient, and the residue thereof, from the money authorized to be raised for that purpose by section twelve of this act, by tax upon said city;

8. To defray the necessary contingent expenses of the board, including an annual salary to the clerk, provided the account of such expenses shall first be audited and allowed by the common council;

9. To have in all respects the superintendence, supervision, and management of the common schools in said city, and from time to time to adopt, alter, modify and repeal, as

they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils and their transfer from one school to another, and generally for the promotion of their good order, prosperity and public utility;

10. Whenever in the opinion of the board it may be advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the city, to report the same to the common council;

11. To prepare and report to the common council such ordinances and regulations as may be necessary or proper for the protection, safe keeping, care and preservation of school-houses, lots and sites and appurtenances, and all the property belonging to the city, connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations; and annually, on or before the first day of February in each year, to determine and certify to said common council the sum in their opinion necessary or proper to be raised under the twelfth section of this act, for the year commencing on the first of March thereafter, specifying the sums required for each of the purposes therein mentioned, and the reasons therefor;

12. Between the first day of July and the first day of August, in each year, to make and transmit to the county clerk, or such other officer as may be designated by law, a report in writing, bearing date the first day of July, in the year of its transmission, and stating:

I. The number of school-houses in said city, and an account and description of all the common schools kept in said city during the preceding year, and the time they have severally been taught;

II. The number of children taught in said schools respectively, and the number of children over the age of four years and under the age of twenty one years residing in said city on the first day of January of that year;

III. The whole amount of school moneys received by the chamberlain of said city during the year preceding, distinguishing the amount received from the county treasurer, from the city tax and from any other source;

IV. The manner in which such moneys have been expended, and whether any and what part remains unexpended, and for what cause;

V. The amount of money received for tuition fees from foreign pupils during the year, and the amount paid for teachers' wages in addition to the public moneys, with such other information relating to the common schools of said city as may from time to time be required by the State Superintendent of Common Schools.

§ 15. It shall be the duty of each commissioner to visit the schools in his ward twice in each year; and the board of education shall provide that each of the schools in the city shall be visited by a committee of three or more of their number, or by their clerk, at least once in each term.

§ 16. The said board of education shall have power to allow the children of persons not resident within the city to attend any of the schools of said city under the care and control of said board, upon such terms as said board shall by resolution prescribe, fixing the tuition which shall be paid therefor.

§ 17. It shall be the duty of said board, in all their expenditures and contracts, to have reference to the amount of moneys which shall be subject to their order during the current year, and not to exceed that amount.

§ 18. The said board of commissioners shall be trustees of the school library or libraries in said city, and all the provisions of law which now are or hereafter may be passed relative to district school libraries shall apply to the said commissioners; they shall also be vested with the same discretion, as to the disposition of the moneys appropriated by any law of this State for the purchase of libraries, which is therein conferred upon the inhabitants of school districts. It shall be their duty to provide a library room or rooms, in the several school-houses in said city, and the necessary furniture therefor. The clerk of said board shall be the general librarian. The board shall also appoint a librarian for each school, to have the care of the books and to superintend the letting out and return thereof. The several school librarians shall from time to time inform the general librarian of the state and condition of the libraries, and the said board, or the general librarian under the direction and by resolution of the said board, may make all purchases of books for the libraries and provide for their equitable distribution among the schools, and exchange or cause to be repaired the damaged books belonging thereto, and also sell any books which may be deemed useless or of improper character, and apply the proceeds to the purchase of other books for said libraries.

§ 19. It shall be the duty of said board, at least fifteen days before the annual election for commissioners in each year, to prepare and report to the common council true and correct statements of the receipts and disbursements of moneys, under and in pursuance of the provisions of this act, during the preceding year; in which account shall be stated, under appropriate heads:

1. The moneys raised by the common council under the twelfth section of this act;

2. The school moneys received by the chamberlain of the city from the county treasurer, distinguishing between the sum received from the State and the sum raised upon the city by the board of supervisors;

3. The moneys received by the common council under the third section of this act;

4. All moneys received by the chamberlain subject to the order of the board, specifying the sources;

5. The manner in which such sums of money shall have been expended, specifying the amount paid under each head of expenditure;

And the common council shall, ten days before such election, cause the same to be published in at least two of the newspapers published in said city.

§ 20. The common council of said city shall have the power to pass such ordinances and regulations as the said board of education may report as necessary and proper for the protection, safe keeping, care and preservation of the school-houses, lots, sites, appurtenances and appendages, libraries, and all necessary property belonging to or connected with the schools in said city, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in the act to incorporate the said city; and all such penalties shall be collected in the same manner that the penalties for the violation of the city ordinances are by law collected, and when collected shall be paid to the chamberlain of the city, and be subject to the order of the board of education, in the same manner as other moneys raised pursuant to the provisions of this act.

§ 21. It shall be the duty of the common council, within fifteen days after receiving the certificate of the commissioners, required by the fourteenth section of this act, of the sums necessary or proper to be raised under the twelfth section of this act, to determine and certify to said board of education the amount that will be raised by them for the year commencing on the first of March thereafter, for the purpose mentioned in said twelfth section, distinguishing between the amount to be raised for teachers' wages and contingent expenses and the amount to be raised for the repairs of school-houses, which amounts shall be subject to the disposal of the board of education.

§ 22. All the moneys required to be raised by virtue of this act, or received by the said city for or on account of the common schools, except such sums as are raised for the purchase of sites for school-houses, shall be deposited, for the safe keeping thereof, with the chamberlain of said city, to the credit of said board of education, and shall be drawn out in pursuance of a resolution or resolutions of said board, by drafts drawn by the president and countersigned by the clerk of said board, payable to the order of the person or persons entitled to receive such moneys; and said chamberlain shall keep the funds, authorized by this act to be received by him, separate and distinct from any other fund which he is or may by law be authorized to receive.

§ 23. It shall be the duty of the clerk of said city, immediately after the election of any person as a commissioner of common schools, personally or in writing to notify him of his election, and if any such person shall not, within ten days after receiving such notice of his election, take and subscribe the constitutional oath, and file the same with the clerk of the said city, the common council may consider it a refusal to serve, and proceed to supply the vacancy occasioned by such refusal; and the person so refusing shall forfeit and pay to the city chamberlain, for the benefit of the tuition fund, a penalty of ten dollars.

[*Chap. 353, Laws of 1850, as amended by chap. 366, Laws of 1851.*]

SECTION 1. It shall be lawful for the board of education of the city of Troy, and the said board is hereby authorized, to discharge all the duties and exercise all the powers belonging to the office of town superintendent of common schools by law, in relation to the formation of joint school districts out of parts of said city and parts of the adjoining towns, and also in the erection of separate school districts, as hereinafter provided, in either the fifth, sixth and seventh wards of said city.

§ 2. Whenever it may become necessary or convenient to form a joint district out of parts of said city and of any adjoining town, the board of education may depute any member of said board, or the clerk thereof, to meet with the superintendent of such adjoining town, and the proceedings of such member of said board, or the clerk thereof, and such town superintendent, in conformity with the statute, duly certified under their hands, in forming, regulating and altering any such districts, shall be valid and conclusive, when approved by said board at any meeting regularly convened.

§ 3. The said board of education may, in its discretion, upon the written application of at least two-thirds of the inhabitants, entitled by law to vote in school district meetings, residing within the territory to be included therein, erect separate school districts, and from time to time regulate and alter the same, in either the fifth, sixth or seventh wards of said city. Such separate school districts, when so erected, and the joint districts provided for in the second section of this act, when so formed, shall severally enjoy all the rights and privileges and be subject to all the duties and liabilities of school districts legally formed in the several towns of this State, and shall be no longer under the care and government of said board of education.

§ 4. It shall be the duty of the trustees of all such joint and separate districts as shall be formed and erected, in pursuance of this act, to make to the board of education of said city all the reports and returns which are or may be by law required in the several towns of this State to be made to the town superintendents thereof. It shall be the duty of the said board of education to apportion to each of the parts of such joint districts lying within said city, and to each of such separate districts, from all the public school moneys that shall thereafter be apportioned and paid to the city, whether the same shall be received from the State school moneys or from the taxes directed by law to be levied and collected for that purpose, the just proportion of such moneys, according to the number of children residing within such parts of said joint districts as shall lie within said city and within said separate districts between the ages of five and sixteen years, inclusive, making the whole number of such children residing within the city the basis for such apportionment, as the same shall appear from the last reports thereof.

§ 5. It shall be the duty of the board of supervisors of the county of Rensselaer, from and after the passage of this act, to direct that all the moneys levied and collected on the inhabitants of the city of Troy for common school purposes, whether the same shall be levied and collected as county taxes or otherwise shall be paid over by the receiver of taxes for said city to the chamberlain thereof, for the sole use and benefit of the free public schools

within said city, and it shall be the duty of the board of education to apply all such moneys to the support of the free schools of said city, in conformity to law.

## UTICA.

[*Laws of 1842, chap. 137, as amended by chap. 131 of 1844, chap. 184, title 10 of 1848, chap. 66 of 1850, chap. 348 of 1854, and chap. 572, Laws of 1857, and chap. 115, Laws of 1867.*]

SECTION 1. At the next annual election for city officers to be held in the city of Utica there shall be elected six commissioners of common schools for the said city, who shall be elected in the same manner as justices of the peace, supervisors and constables are elected in said city pursuant to the act incorporating said city.

§ 2. Within ten days after their election, the persons so elected shall take and subscribe the oath of office prescribed by the Constitution, and file the same with the clerk of said city; and they or a majority of them shall thereupon meet and cause the whole number of commissioners so chosen to be divided into three classes, to be severally numbered first, second and third. The term of office of the first class shall expire at the end of one year, of the second class at the end of two years, and of the third class at the end of three years; but each class shall continue in office until their successors are elected and have taken the oath of office.

§ 3. At every annual election for city officers in said city after the next, there shall in like manner be elected two commissioners of common schools, to supply the places of those whose term of office is about to expire; they shall hold their office for three years, and until their successors are elected and have taken the oath of office. The term of office of all commissioners elected pursuant to the provisions of this act shall commence on the first Monday after the first Monday in March next succeeding their election.

§ 4. The common council of said city may make appointments of commissioners of common schools, to fill vacancies which may occur from any cause other than the expiration of the term of office of the person elected. The commissioners so appointed shall hold their office for the unexpired term of those to supply whose places they are appointed.

§ 5. Any commissioner of common schools in said city may be removed from office for official misconduct by the common council thereof, by a vote of two-thirds of the members thereof.

§ 6. The commissioners of common schools in said city shall constitute a board to be styled the "commissioners of common schools in the city of Utica," which shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of this act; a majority of the board shall form a quorum. At their first meeting after each annual city election they shall elect one of their number chairman, and whenever the chairman shall be absent from a meeting of the board they may appoint a chairman *pro tempore*; they shall also elect a clerk, who shall hold his office during the pleasure of the board; the said commissioners shall receive no compensation for their services.

§ 7. The clerk of said board shall keep a record of the proceedings thereof, which record, or a transcript therefrom certified by the chairman and clerk, shall be received in all courts as *prima facie* evidence of the facts therein set forth; and such records, and all books, papers and accounts of the said board, shall at all times be subject to the inspection of the common council and of any committee thereof.

§ 8. The common council of the said city shall have the power, and it shall be their duty, to raise from time to time, by tax upon the real and personal estates in said city which shall be liable to taxation for the ordinary city taxes or for town or county charges, such sums as may be determined and certified by the said board of commissioners to be necessary or proper for any or all of the following purposes:

1. To purchase, lease or improve sites for school-houses;
2. To build, purchase, lease, enlarge, alter, improve and repair school-houses and their out-houses and appurtenances;
3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages;
4. To procure fuel and defray the contingent expenses of the common schools, and the expenses of the district library of said city, which shall be in addition to the amount of school moneys now or hereafter appropriated or provided by law for common schools in said city; provided, nevertheless, that such tax shall not be laid oftener than once in each year, and that the whole amount to be raised shall not in any one year exceed the sum of five thousand dollars.

§ 9. The common council shall cause the amount of the tax, at any time ordered to be raised in pursuance of the last section, to be added to the amount which they are otherwise authorized by law to raise by tax in said city, and they shall cause the same, with the collectors' fees thereon, to be assessed, levied and collected at the same time, by the same warrant and in the same manner with the taxes raised for city expenses under and by virtue of the forty-fourth section of the act to incorporate said city.

§ 10. All moneys to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to or provided for said city, shall be paid to the treasurer of the said city, who, together with the sureties upon his official bond, shall be accountable therefor in the same manner as for other moneys of the said city; the said treasurer shall also be liable to the same penalties for any official misconduct in relation to the said moneys as for any similar misconduct in relation to the other moneys of the city.

§ 11. After the passage of this act the treasurer of the said city shall not pay out any moneys in his hands, received by the said city either as school moneys or collected or received by virtue of any of the provisions of this act, excepting upon an order drawn upon him and signed by the chairman and clerk of the said board of commissioners; and no such order shall be drawn except by virtue of a resolution of the board.

§ 12. The said board may cause a suit or suits to be prosecuted in the name of the city of Utica upon the official bond of the treasurer, or of any collector of the said city, for any default, delinquency or official misconduct in relation to the collection, safe keeping or payment of any moneys in this act mentioned.

§ 13. The said board shall have power, and it shall be their duty:

1. To establish and organize such and so many common schools in said city (including the common and free schools now existing therein) as they shall deem requisite and expedient, and to alter and discontinue the same;

2. To purchase or hire school-houses and rooms and lots or sites for school-houses, and to fence and improve them as they deem proper;

3. Upon such lots or sites, and upon any sites now owned by said city, to build, enlarge, alter, improve and repair school-houses, out-houses and appurtenances, as they may deem advisable;

4. To procure fuel and defray the contingent expenses of the common schools, and the expenses of the district library of said city, which shall be in addition to the amount of school moneys now or hereafter appropriated or provided by law to be raised for common schools in said city; provided, nevertheless, that such tax shall not be laid oftener than once in each year, and that the whole amount to be raised shall not in any one year exceed the sum of ten thousand dollars. [*As amended by § 2 of chapter 115, Laws of 1867, p. 185.*]

5. To have the custody and safe-keeping of the school-houses, out-houses, apparatus, books, furniture and appendages, and to see that the ordinances of the common council in relation thereto be observed;

6. To contract with and employ all teachers in the common schools, and at their pleasure to remove them;

7. To pay the wages of such teachers out of the school moneys which shall be appropriated and provided in the said city, so far as the same shall be sufficient, and the residue thereof from the tuition fees they shall be authorized to collect or receive, as herein provided; and in case the said school moneys and tuition fees shall be insufficient to pay such wages, then to pay the deficiency out of the moneys to be raised by the common council of said city, in pursuance of the eighth section of this act;

8. To fix the rate of tuition fees in said schools at a sum not exceeding two dollars per term, which shall be a period of not less than eleven weeks, and to designate a person or persons to whom the same may be paid previous to issuing a warrant for the collection thereof; and to exempt from the payment of the whole or any part of the tuition fees such person as they may deem entitled to such exemption, for indigence or any other sufficient cause, and cause a list of the persons so exempted, with the extent of their exemption, to be kept by the clerk of the board;

9. To defray the necessary contingent expenses of the board, including an annual salary to the clerk which shall not exceed two hundred and fifty dollars; provided that the accounts of said necessary expenses shall first be audited and allowed by the common council. [*As amended by § 4, chapter 115, Laws of 1867.*]

10. After the end of each school term to make out a rate bill containing the name of each person liable to pay tuition fees, who shall not have paid them (prior to the making out of such rate bill) to the person or persons designated by the board for that purpose, and the amount for which such person is liable, adding thereto a sum not exceeding five cents on each dollar of the sum due, for collector's fees, and to annex to such rate bill a warrant for the collection thereof;

11. To deliver such rate bill, with the warrant annexed, to one of the collectors of taxes of said city, who shall execute the same in like manner and with like effect with the other warrants for the collection of taxes placed in his hands; or, in their discretion, to deliver the same to a collector to be appointed by said board of commissioners, who shall, if required by said board, execute to said commissioners in their corporate capacity a bond, with one or more sureties, to be approved by said commissioners or a majority of them, which bond, as to its penalty and conditions, shall be the same as is by law required to be executed by the collectors of school districts; and the said board of commissioners shall have the same power and authority, in regard to said bond and the collection thereof, as the trustees of school districts have by law in regard to the bonds given by collectors of school districts; and the said collector shall have the same power in the execution of said warrants that the collectors of taxes of said city have by virtue of this act;

12. To have in all respects the superintendence, supervision and management of the common schools in said city, and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils and their transfer from one school to another, and generally for the promotion of good order, prosperity and public utility;

13. Whenever, in the opinion of the board, it may be advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the city, to report the same to the common council;

14. To prepare and report to the common council such ordinances and regulations as may be necessary or proper for the protection, safe keeping, care and preservation of school-houses, lots, sites and appurtenances, and all the property belonging to the city connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations; and annually to determine and certify to the said common

council the sums in their opinion necessary and proper to be raised under the eighth section of this act, specifying the sums required for each of the several purposes therein mentioned;

15. To unite with the commissioners of schools of any adjoining town, and form, regulate and alter any district out of any portion of the said city and such town whenever they shall deem it necessary and proper to do so; in which case, so far as such district or districts are concerned, the said board shall, during the existence of such districts, have the same powers and duties which the commissioners of schools in towns have;

16. Between the first day of July and the first day of August, in each year, to make and transmit to the county clerk a report in writing, bearing date the first day of July in the year of its transmission, and stating:

I. The whole number of districts separately set off within the said city, in pursuance of subdivision fifteen of this section;

II. An account and description of all the common schools kept in said city during the preceding year, and the time they have severally been taught;

III. The number of children taught in the said schools respectively, and the number of children over the age of five and under sixteen [21] years residing in the city on the first day of January of that year;

IV. The whole amount of school moneys received by the treasurer of the said city during the preceding year, distinguishing the amount received from the county treasurer, from the town collector, and from any other and what source;

V. The manner in which such moneys have been expended, and whether any and what part remains unexpended, and for what cause;

VI. The amount of money received for tuition fees during the year, and the amount paid for teachers' wages, in addition to the public moneys, with such other information as the superintendent of common schools may from time to time require.

§ 14. All persons collecting or receiving tuition fees, pursuant to the designation or the warrant of the said board, shall be liable for all moneys thus collected or received by them, in the same manner as collectors are for moneys received by them for taxes, and any collector of the said city and his sureties shall be liable upon his official bond for any default, delinquency, neglect or misconduct, in the duties with which he may be charged under or by virtue of this act, in the same manner and with the like effect as for any other official default, delinquency, neglect or misconduct; and such collector shall also be liable to the same penalties for any such official misconduct as for any similar misconduct in relation to any other duties of his office.

§ 15. The warrant annexed to any rate bill, pursuant to the provisions of this act, shall be under the hands of the commissioners, or a majority of them, and shall command the collector to collect from every person in such rate bill named the sum therein set opposite his name; and in case any person so named shall not pay such sum on demand, to levy the same, together with the fees of said collector, by distress and sale of goods and chattels of the person who ought to pay the same, or of any goods and chattels in his possession, wheresoever the same may be found in the city of Utica, and to make return of such warrant to the treasurer of said city within thirty days after the delivery thereof.

§ 16. Such warrants shall have the like force and effect as warrants issued by the boards of supervisors to the collectors of towns; and the collectors of the said city are authorized to collect the amount due from any person or persons in the said city in the same manner and with the same power that collectors of a school district have for the collection of tax or rate bills issued by the trustees of school districts.

§ 17. The board of commissioners shall possess the same powers which the trustees of school districts have for the collection of tuition fees which shall not be collected by the warrant issued by them with rate bills, and subject to the same regulations; and they may, in like manner as the trustees of school districts, correct and amend errors in making out any rate bill, and refund to any person any sum improperly collected in consequence of such error.

§ 18. It shall be the duty of the said board, in all their expenditures and contracts, to have reference to the amount of moneys which will be subject to their order during the then current year for the particular expenditures in question.

§ 19. The said board of commissioners shall be the trustees of the district library in said city, and all the provisions of the act entitled "An act respecting the school district libraries," passed April 15, 1839, and all other laws which now are or may hereafter be passed relating to district school libraries, shall apply to the said commissioners in the same manner as if they were trustees of a school district comprehending the said city; they shall also be vested with the discretion as to the disposition of the moneys appropriated by the fourth section of chapter two hundred and thirty-seven of the statute of eighteen hundred and thirty-eight, which is therein conferred upon the inhabitants of school districts. It shall be their duty to provide a library room and the necessary library furniture, and appoint a librarian to make all purchases of books for the said library, and from time to time to exchange or cause to be repaired damaged books belonging thereto; they may also sell any books which they deem useless, or of improper character, and apply the proceeds to the purchase of other books for the said library.

§ 20. It shall be the duty of said board, at least fifteen days before the annual election for city officers in each year, to prepare and report to the common council true and correct statements of the receipts and disbursements of moneys under and in pursuance of the provisions of this act during the preceding year, in which account shall be stated, under appropriate heads:

1. The moneys raised by the common council under the eighth section of this act;

2. The school moneys received by the treasurer of the city from the county treasurer and the collector of taxes for town and county charges in said city;



3. The moneys received for tuition fees ;  
4. All other moneys received by the treasurer, subject to the order of the board, specifying the sources ;

5. The manner in which such moneys shall have been expended, specifying the amount paid under each head of expenditure ;

And the common council shall, ten days before the said election, cause the same to be published, with the statement required to be published by the thirty-third section of the act to incorporate the said city.

§ 21. The said board shall be subject to the rules and regulations from time to time made by the Superintendent of Common Schools, so far as the same may be applicable to them, and not inconsistent with the provisions of this act.

§ 22. The common council of said city shall have the power, and it shall be their duty, to pass such ordinances and regulations as the said board of commissioners may report as necessary and proper for the protection, safe keeping, care and preservation of the school-houses, lots, sites and appurtenances, and all the necessary property belonging to or connected with the schools in said city, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in the act to incorporate the said city ; and all such penalties shall be collected in the same manner that the penalties for violation of the city ordinances are by law collected, and when collected shall be paid to the treasurer of the city, and be subject to the order of the board of commissioners, in the same manner as other moneys raised pursuant to the provisions of this act.

§ 23. Whenever the said board shall report to the common council that it is advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the city, it shall be the duty of the common council to sell the same without unreasonable delay, and upon such terms as the said council may deem advisable. The proceeds of all such sales shall be paid to the treasurer of the city, and shall be subject to the order of the said board, to be expended by them in the purchase, leasing, repairs or improvements of other school-houses, lots, school furniture, apparatus or appurtenances.

§ 24. The title of the school-houses, sites, lots, furniture, books, apparatus and appurtenances, and all other school property hereinbefore in this act mentioned, shall be vested in the city of Utica ; and the same, while used for or appropriated for school purposes, shall not be liable to be levied upon or sold by virtue of any warrant or execution, nor be subject to taxation or assessment for any purpose whatsoever ; and the said city, in its corporate capacity, shall be liable to take, hold and dispose of any real or personal estate transferred to it by gift, grant, bequest or devise, for the use of common schools of the said city, whether the same shall be transferred in terms directly to said city by its proper style, or by any other designation or to any other designation, or to any person or persons or body, for the use of said schools.

§ 25. All former acts and parts of acts in relation to common and free schools in the said city, inconsistent with the provisions of this act, are hereby repealed.

[*Laws of 1850, chap. 66, as amended by chap. 258 of 1852, and chap. 348 of 1854, and chap. 115, Laws of 1867.*]

SECTION 1. The board of school commissioners of the city of Utica shall annually prepare an estimate of the amount of money necessary to be raised in the said city, for the then ensuing year, for the payment of teachers' wages (exclusive of the money now required or which may hereafter be required by law to be appropriated or apportioned from the State school money for the use of common schools in said city), and present the same to the common council of said city ; and said common council shall cause the same to be levied and collected in the said city, in the same manner as other city taxes are levied and collected ; but the sum to be raised by virtue of this section, shall not in any year exceed three times the sum appropriated or apportioned to the city for the last year (eighteen hundred and sixty-six) by virtue of the law in reference to common schools. [*As amended by § 1, chapter 115, Laws of 1867, p. 185.*]

§ 2. The said board of commissioners shall appoint a superintendent of common schools for the city, to hold his office during the pleasure of the board, and to perform such duties in the care and oversight of the schools in the city as it may charge him with. He shall be paid such compensation for his services as the board shall from time to time determine, which shall be audited and allowed as other town charges are in the said city.

[*Laws of 1853, chap. 272.*]

SECTION 1. After the passage of this act, the commissioners of common schools in the city of Utica, for the time being, shall be the trustees of the Utica academy, and possess the powers and perform the duties which the present board of trustees thereof possess and are charged with.

§ 2. The said academy shall be one of the common schools of the said city of Utica, but shall continue subject to the visitation of the Regents of the University, and entitled to all the rights and privileges which it has hitherto possessed.

§ 3. A majority of the board of trustees shall constitute a quorum to transact business.

[*Chap. 115, Laws of 1867, p. 185.*]

§ 3. It shall be the duty of the treasurer of the city of Utica, immediately upon the receipt by him of any money appropriated, raised or designed for the use of the common schools of said city, to deposit the same in the bank or banks in which he is required to

deposit the moneys of the said city; and to cause the same to be immediately entered and continually kept in and by accounts separate and distinct from the general account and all other accounts of the city treasurer; and he shall cause all money which shall be raised (and be received by him) for the purpose of buying sites and building school-houses in said city, to be kept, in manner aforesaid, in and by a separate account, distinct from the other moneys designed for school purposes. And the said moneys for the use of the said schools herein mentioned shall not be used, paid out or transferred by said treasurer, or in any way whatever, except upon the order of the commissioners of common schools in said city, in the manner now provided by law.

[*Chap. 7, Laws of 1846, p. 8.*]

SECTION 1. Whenever the board of school commissioners of the city of Utica shall be of opinion that it is necessary to erect one or more new school-houses for the accommodation of the common schools in said city, it shall be their duty to state such necessity, with the reasons thereof, in their annual report, required to be made to the common council of the said city, together with an estimate of the expense of erecting the same.

§ 2. At the succeeding charter election, each elector of said city may, upon a separate ballot, write or print the words "For new school-houses," or "Against new school-houses," and in canvassing the ballots, the inspectors of election shall make a return of the number of ballots containing either of such expressions, to the common council of the city, in the same manner that they make returns of votes given for city officers. At any election, when a vote by ballot is to be taken, the inspectors of election in the several election districts of said city shall provide a separate box at each poll, in which the said ballots shall be deposited, and which boxes shall be labeled "school-houses." [*As amended by § 1, chapter 572, Laws of 1857.*]

§ 3. If the number of ballots containing the words "For new school-houses," exceed those containing the words "Against new school-houses," it shall be the duty of the common council, in addition to the moneys which they are otherwise authorized by law to raise by tax in the said city, to raise, in the same manner that moneys are now raised for the ordinary expenses thereof, either in the ensuing year, or in one, two or three successive years, as they shall elect, such sum or sums of money as the board of school commissioners in their said report shall have estimated to be necessary for the erection of said school-house, or school-houses, and for no other purpose whatsoever.

[*Chap. 164, Laws of 1856, p. 256, as amended by § 3, chap. 572, Laws of 1857, p. 221.*]

Section six amends § 106 of the act of 1849, as follows:

§ 106. The board of commissioners of common schools may, from the moneys received by them for the school district library, defray the contingent expenses of the library and the salary of the librarian. For the purpose of the distribution of any moneys now or hereafter appropriated by the State for the support of common schools, in which the said city of Utica shall be entitled to a share, every one hundred children, between the ages of four and twenty-one, in said city, as ascertained in the last preceding annual report of the commissioners of common schools therein, or otherwise, according to law, shall be deemed to be a school district for the purpose aforesaid, and shall be calculated and stated accordingly in the reports of said commissioners.

§ 4. Such moneys when raised shall be paid to the treasurer of the city, and be kept by him distinct from other moneys in his hands, subject to be drawn by the board of school commissioners, for the expenses of erecting such proposed school-house, or school-houses, and for no other purpose whatsoever.

[*Chap. 18, Laws of 1862, p. 28, title 10.*]

§ 124. The act entitled "An act in relation to common schools in the city of Utica," passed April seventh, eighteen hundred and forty-two, and the several acts amending the same, shall continue in force, excepting wherein their provisions are expressly amended, any thing herein contained to the contrary notwithstanding.

[*Chap. 9, Laws of 1866, p. 26.*]

[This law authorizes the city to borrow \$25,000, to be paid in three equal annual installments, by a tax to be levied and collected like other city taxes, the money to be paid on the order of the commissioners of common schools, and to be expended in erecting a building for the Utica academy.]

[*Chap. 269, Laws of 1858, p. 425.*]

SECTION 1. The commissioners of common schools of the city of Utica (ex-officio trustees of the school district library of said city), are hereby authorized to make such rules and regulations, from time to time, for the better preservation and care of the books of the said district library, as they may deem expedient; and may therein designate and determine such valuable books as cannot be circulated without material injury, to be books of reference, not to be taken from the library rooms without the special permission of the commissioners, or the librarian, under their instructions, and subject to such rules and conditions as they may impose; and they may also exercise, and authorize the librarian to exercise, discretionary power as to the delivery of books to minors, and irresponsible persons; any exercise of such authority by the librarian to be a subject of appeal to the board of commissioners. The said commissioners may impose fines for the violation or non-observance of said rules

and regulations, not exceeding the fines authorized to be imposed by the trustees of school district libraries, under the general regulations respecting the same; and the rules and regulations so made and adopted by them shall be obligatory upon all persons and officers having charge of said library, or using or possessing any of the books thereof, and may be enforced in the same manner that the said general regulations concerning the books in school district libraries framed by the Superintendent under the act respecting libraries, passed April 15, 1839, may be enforced. The said general regulations framed under the said act shall be applicable to and remain in force in regard to the said library of the city of Utica, except when the same shall be inconsistent with the rules and regulations made by the said commissioners under and by virtue of this act.

[Chap. 572, *Laws of 1857*, p. 221.]

§ 4. All claims and accounts presented to the board of school commissioners shall be in writing. They shall be numbered and filed, and a brief entry of the name of the claimant, number, nature and amount of the claim, made in a book to be kept for that purpose, prepared with appropriate letters and columns, so that the entry shall serve as an alphabetical index to the claim.

The book shall be provided with columns, in which shall be entered, after the claims, the date when audited, and the amount, if any, allowed thereon.

The school commissioners shall annually, at least ten days before the charter election, report to the common council an abstract of the claims and accounts presented and allowed during the year, as shall appear by such record, classifying the same under appropriate heads.

#### WATERFORD.

[Chap. 334, *Laws of 1857*, vol. 1, p. 698.]

SECTION 1. The board of education of union free school district number one, town of Waterford, county of Saratoga, shall have power to appoint a clerk, who may or may not be one of their number, and hold his office till the first meeting of the board after the annual election of trustees, unless removed by them for cause; his compensation shall be fixed by the board, not to exceed thirty dollars per annum. The said clerk shall keep a record of all proceedings of the board, and perform such other duties as the board may direct or their by-laws prescribe. The said record, or a transcript thereof, certified by the president and clerk, shall be received in all courts as *prima facie* evidence of facts therein set forth, and such records, and all the books, accounts, vouchers and papers of said board, shall be in the keeping of the clerk, subject at all times to the inspection of the supervisor of the town of Waterford, and school commissioner.

§ 2. All previous acts and parts of acts inconsistent herewith are hereby repealed.

#### WATERLOO.

[*Laws of 1853*, chap. 151, p. 279.]

SECTION 1. The trustees of school districts numbers one and fifteen, respectively, in the town of Waterloo, in the county of Seneca, shall annually, at least three weeks before the annual meeting of the taxable inhabitants of their respective districts, prepare an estimate of the amount of money which they shall deem necessary to pay all the debts of their respective districts, and for the support of common schools therein, for the ensuing year, exclusive of the moneys which said districts respectively may be entitled to receive from the town superintendents of common schools of said town of Waterloo, and including the sums required for the purchase of necessary furniture, apparatus, books, repairs and improvements of school-houses, and for contingent expenses, and shall cause written or printed notices thereof to be posted up for two weeks thereafter, in five or more of the most public places in their respective districts; and said trustees shall present said respective estimates at such annual meetings of said inhabitants of their respective districts, when the inhabitants of said districts at which such estimate is presented, entitled to vote at school district meetings, then present, shall vote thereon; and the amount of money then voted by a majority of such inhabitants, present at said meeting, shall be levied and collected by a tax upon the taxable property of said district in which it was voted, in the manner now provided by law for levying and collecting taxes for district school purposes.

§ 2. Whenever the trustees of said respective districts shall have completed their respective tax lists, they shall attach thereto and issue their warrant to the collector of the district returnable in thirty days, for the collection of the same, and shall take from the collector of their said district approved security for the faithful performance of his duty, and for paying over the moneys collected by him thereon. Such warrants may be renewed from time to time, as said trustees may deem proper, as to any tax remaining unpaid at the time of renewal. The money so collected shall be paid over to the trustees of the district from which the same was collected, and shall be by them expended and appropriated for the purpose for which the same was voted.

§ 3. In case any annual school district meeting of said inhabitants, of either of said districts, shall have passed without such estimate having been presented by the trustees of said district, then such estimate, upon the notice hereinbefore mentioned, may be presented

and voted upon at any duly adjourned annual meeting, or at any special meeting duly called for that purpose, and the sum then voted shall be levied and collected upon the taxable property of the district in which it is voted in the same manner as if voted at an annual meeting; and for the present year said estimates may be made and presented, after notice as aforesaid, to any duly adjourned annual meeting, or to any special meeting duly called for that purpose, in either or both of said districts, and may be voted upon at any such adjourned or special meeting; and any tax voted at any such adjourned or special meeting, for the purposes aforesaid, shall be levied and collected in the same manner as if voted at an annual meeting of said inhabitants of said district.

§ 4. All taxes imposed under this act shall be a lien upon the lands taxed, and be enforced and collected by sale, in the manner that county taxes are, upon a return made by said collectors, respectively, to the treasurer of said county of Seneca, of all unpaid taxes in said districts respectively.

§ 5. All statutes inconsistent with this act are hereby repealed, so far as they relate to said districts.

[*Laws 1855, chap. 238, p. 367.*]

SECTION 1. The trustees of school district number one, in the town of Waterloo, in the county of Seneca, and their successors in office, are hereby created a body corporate, by the name of the "trustees of Waterloo union school," and empowered to establish and organize a classical school in said district and in the village of Waterloo, which school shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies, and share in the distribution of the moneys of the literature fund of this State as the academies thereof; and said trustees shall have authority to make regulations respecting the attendance of the children of the said district in the school-houses thereof, the transfer of them from one room or school-house to another, the instruction and studies to be given and pursued in said schools; provided, however, that this act shall not affect the rights and duties of said trustees and district under the statutes of this State relating to common schools, or under any special act relating to said district number one.

[*Chap. 15, Laws of 1859, p. 38.*]

SECTION 1. The provisions of the act entitled "An act to change the school year, and to amend the statutes in relation to public instruction," passed April 12, 1858, shall apply to the union school and districts number one and fifteen, in the town of Waterloo, county of Seneca, so far as the same relates to the time and place of holding the annual meetings of the taxable inhabitants and legal voters of said districts and school, and so far as relates to the time of making the annual reports of the trustees thereof, and no further.

§ 2. All the acts of the trustees of the said school and districts, and the votes, acts and doings of the taxable inhabitants and voters in said school and districts, had and done since the passage of said act of April 12, 1858, at their district meetings, are hereby declared to be valid.

§ 3. Nothing in this act contained shall affect any action or proceedings, in which said trustees, or the collectors of said districts, or school, or either of them, are a party, commenced prior to the passage of this act.

## WATERTOWN.

[*Chap. 520, Laws of 1865, p. 918, as amended by chap. 153, Laws of 1867, p. 233.*]

SECTION 1. There shall be elected at a special election, to be held in the village of Watertown, on the first Monday in June, eighteen hundred and sixty-five, in the same manner and under the same regulations as the water commissioners of said village are elected, nine persons to be commissioners of common schools of said village. The persons so elected shall, within six days after receiving notice of their election, take the oath of office prescribed by the Constitution of this State, and file the same with the village clerk.

§ 2. Within ten days after the election, said commissioners shall meet at the trustees' room of said village, and shall determine by lot which three of the nine persons so elected shall serve for the term ending on the second Monday of June, eighteen hundred sixty-six, and which for the term ending on the second Monday of June, eighteen hundred sixty-seven, and which for the term ending the second Monday of June, eighteen hundred sixty-eight.

§ 3. There shall in like manner, on the first Monday of June in each year thereafter, be elected three commissioners of schools of said village, to supply the places of those whose term of office then expires, who shall hold their office three years and until others are elected and have taken the oath of office. The term of the office of all the commissioners elected pursuant to this act shall commence on the Monday next after their election.

§ 4. The board of commissioners may make appointments of commissioners of common schools to fill vacancies which may occur from any other cause than the expiration of the term of office of those elected. The commissioners so appointed shall hold their office until the Monday next succeeding the next annual election; and at each annual election

there shall be chosen a commissioner to supply the place of any person so appointed, and any person thus elected shall serve out the unexpired term, and the board at any time shall determine by a two-third vote what constitutes a vacancy. Any commissioner of common schools in said village may be removed for official misconduct by a two-third vote of the village trustees.

§ 5. The commissioners of common schools of said village shall constitute a board to be styled "the board of education of the village of Watertown," and shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of this act. A majority of the board shall constitute a quorum. The first meeting shall be held on the second Monday of June, eighteen hundred sixty-five, and the annual meetings each year thereafter on the second Monday of June in each year. At the first meeting, and annually thereafter at the annual meeting, they shall elect one of their number president, and when he shall be absent a president *pro tempore* shall be chosen; but such president shall only have a casting vote. The said commissioners shall receive no compensation for their services, nor shall they be interested, directly or indirectly, in any contract for building or for making any improvement or repairs provided for by this act. They shall meet for business as often as once each month, and may adjourn for any shorter time. Special meetings may be called by the president, or by any two members of the board, as often as necessary, by giving personal notice to each member of the board, or by causing a written or printed notice to be left at his last place of residence at least twenty-four hours before the hour for such special meeting.

§ 6. The said board shall appoint a clerk, who shall hold his office during its pleasure, and shall fix his compensation. He shall keep a record of the proceedings of the board, and perform such other duties as it may prescribe. The said record, or a transcript thereof, certified by the clerk, shall be received in all courts as *prima facie* evidence of the facts therein set forth; and such record, and all the books, accounts, vouchers and papers of said board shall at all times be subject to the inspection of the public.

§ 7. The board of trustees of said village shall have power, and it shall be their duty, to raise, from time to time, by tax to be levied upon all the real and personal estate in said village which shall be liable to taxation for the ordinary village taxes, or for village and county charges, such sums as may be determined and certified by the said board of education to be necessary and proper for any or all the following purposes:

1. To purchase, lease or improve sites for school-houses;
2. To build, purchase, lease, enlarge, alter, improve and repair school-houses, and their out-houses and appurtenances;
3. To purchase, exchange, improve and repair school apparatus, books, mineral and geological specimens, furniture and appendages; but the power herein granted shall not be deemed to authorize the furnishing with class or text books any scholar whose parents or guardian shall be able to furnish the same;
4. To procure fuel, and defray the contingent expenses of the common schools, and the expenses of the laboratory, cabinet and school library of said village, and the necessary contingent expenses of said board, including the compensation of the clerk of the board;
5. To pay teachers' wages after the application of public moneys which may by law be appropriated and provided for that purpose; provided, nevertheless, that the tax to be levied as aforesaid, and collected by virtue of this act, shall be collected in the same manner and at the same time as the other village taxes;
6. The amount per year raised for teachers' wages and contingent expenses shall not be less than twice nor more than six times the amount appropriated to said village from the common school fund and other public moneys during the previous year; nor shall the amount in any one year for buying sites, renting rooms and repairing school-houses exceed two thousand dollars, except as is hereinafter provided. And the board of trustees of the village are authorized and directed, when necessary, to borrow in anticipation of the one year's amount, or any part thereof, of taxes so to be raised, collected and levied as aforesaid.

§ 8. All moneys to be raised pursuant to the provisions of this act, and all school moneys by law appropriated to or provided for said village, shall be paid to the treasurer of said village, who, together, with the sureties upon his official bond, shall be accountable therefor, in the same manner as for other moneys of said village. Said treasurer shall not receive to exceed one-half of one per cent for receiving, safe keeping and disbursing said school moneys, and shall be liable to the same penalties for official misconduct in relation to said school moneys as for any similar misconduct in relation to other moneys of said village.

§ 9. All moneys required to be raised by virtue of this act, or received by said village for the use of common schools, shall be deposited for the safe keeping thereof, with the treasurer of said village to the credit of said board of education, to be kept separate and distinct from any other funds. The treasurer shall pay out the moneys authorized by this act to be received by him, upon drafts drawn by the president and countersigned by the clerk of said board of education; and no such draft shall be drawn, except by virtue of a resolution of the said board of education, and shall be made payable to the person or persons entitled to receive such moneys, or to their order.

§ 10. The said board may cause a suit or suits to be prosecuted in the name of the village of Watertown, upon the official bond of the treasurer or of any collector of said village, for any default, delinquency or official misconduct in relation to the collection, safe keeping or payment of any moneys in this act mentioned.

§ 11. The said board shall have power, and it shall be their duty:

1. To establish and organize such and so many schools in said village, including the common schools now established therein, as they shall deem requisite and expedient, and to alter and discontinue the same;

2. To purchase or hire school-houses, rooms, lots or sites for school-houses, and to fence and improve them as they may deem proper, with money provided in section seven of this act;

3. Upon such lots and upon any sites now owned by said village to build, enlarge, alter, improve and repair school-houses, out-houses and appurtenances as they may deem advisable;

4. To purchase, exchange, improve and repair school apparatus, cabinet specimens, books for indigent pupils, furniture and appendages, and to provide fuel for the schools and to defray their contingent expenses, and the expenses of the school library;

5. To have the custody and safe keeping of the school-houses, out-houses, books, furniture, apparatus, cabinets and appendages, and to see that the ordinances of the board of village trustees, in relation thereto, be observed;

6. To contract with and employ all teachers of the schools under their charge, and at their pleasure remove them;

7. To pay the wages of such teachers out of the school moneys, literature and other funds which shall be appropriated and provided in the said village, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised for that purpose by section seven of this act, by tax on said village;

8. To defray the necessary contingent expenses of the board, including the compensation of the clerk;

9. To have the superintendence, supervision and management of the public schools of said village, and from time to time, to adopt, alter and modify and repeal, as they may deem expedient, rules and regulations for their organization, government and instruction, for the reception of pupils and their transfer from one school to another, and generally for the promotion of their good order, prosperity and public utility;

10. Whenever in the opinion of the board, it may be advisable to sell any of the school-houses, lots or sites, or any of the school property now or hereafter belonging to the village, to report the same to the board of village trustees;

11. To prepare and report to the village trustees such ordinances and regulations as may be necessary and proper for the protection, safe keeping, care and preservation of school-houses, lots and sites and appurtenances, and all the property belonging to the village, connected with or appertaining to the schools, and to suggest proper penalties for the violation of such ordinances and regulations, and annually, on or before the second Monday of June of each year, to determine and certify to said board of village trustees, the sums, in their opinion, necessary or proper to be raised, under the seventh section of this act, specifying the sums required for each of the purposes therein mentioned, and the reasons therefor;

12. Between the first day of October and the first day of November in each year, to make and transmit to the State Superintendent of Public Instruction a report in writing, bearing date the first day of October in the year of its transmission, and stating:

I. An account and description of all the public schools kept in said village during the preceding year, and the time they have been severally taught;

II. The number of resident children taught in such schools respectively, and the sum of the days' attendance of all such children in the schools. The number of children over the age of five and under the age of twenty-one years, residing in said village on the last day of September of that year;

III. The whole amount of school moneys received by the treasurer of said village during the preceding year, distinguishing the amount received from the county treasurer, the village collector, and from any other source;

IV. The manner in which such moneys have been expended, and whether any and what part remains unexpended, and for what cause;

V. The amount of moneys received for tuition fees from foreign pupils during the year, and the amount paid for teachers' wages, in addition to the public moneys, with such other information relating to the public schools of said village as may, from time to time, be required by the State Superintendent of Public Instruction;

13. To examine persons proposing to teach schools within its jurisdiction, and to inquire into their moral fitness and capacity, and if found to be qualified, to grant them certificates of qualification, of the same force and effect as certificates or licenses granted by school commissioners under the provisions of chapter five hundred and fifty-five of the Laws of eighteen hundred and sixty-four, but to be used only within the jurisdiction of said board [Added by chapter 153, Laws of 1867, p. 233.]

§ 12. Each school commissioner shall visit all the schools in said village at least twice in each year of his official term; and said board of education shall provide that each of said schools shall be visited by a committee of three or more of their number at least once in each term.

§ 13. The said board of education shall have power to allow the children of persons not residents in said village to attend the schools of said village, under the control and care of said board, upon such terms as said board shall by resolution prescribe, fixing the tuition which shall be paid therefor.

§ 14. It shall be the duty of said board, in all their expenditures and contracts, to have reference to the amount of moneys which shall be subject to their order during the current year, for the particular expenditures in question, and not to exceed that amount.

§ 15. The said board of education shall be trustees of the school libraries in said village; and all the provisions of law which now are or hereafter may be passed, relative to school district libraries, shall apply to said board of education in the same manner as if they were trustees of a school district comprehending said village. They shall also be vested with the same discretion as to the disposition of moneys appropriated by the laws of this state for the purchase of libraries which is therein conferred on the inhabitants of school districts. It

shall be their duty to provide a room or rooms for the library or libraries and the necessary furniture therefor. The librarian shall report to the board of education the condition of the library or libraries under their charge; and the said board, or clerk thereof, under the direction and by the resolution of said board, may make all purchases of books for said library or libraries, and may direct the mode of their distribution, and may cause to be repaired damaged books belonging thereto, and may sell any book in said library or libraries that may be deemed useless, and apply the proceeds to the purchase of other books for said library or libraries.

§ 16. The title of the school-houses, sites, lots, furniture, apparatus, and appurtenances, and all other school property in this act mentioned, shall be vested in the village of Watertown, and the same, while used or appropriated for school purposes, shall not be levied upon or sold by virtue of any warrant or execution, nor be subject to taxation for any purpose whatever; and the said village, in its corporate capacity, shall be able to take, hold, and dispose of any personal or real estate transferred to it by grant, gift, bequest, or devise, for the use of the public schools of said village, whether the same be transferred in terms to said village, by its proper style, or by any other designation, or to any person or persons, or body, for the benefit or use of said schools.

§ 17. The trustees of said village shall, upon the recommendation of said board of education, sell any of the school-houses, sites, lots, or any of the school property now or hereafter belonging to said village, upon such terms as the board of education shall deem reasonable; the proceeds of such sale shall be paid to the treasurer of said village, and shall be by said board expended in the purchase, repairs or improvement of school-houses, lots, sites, or school furniture, apparatus or appurtenances.

§ 18. It shall be the duty of said board, at least fifteen days before the annual election for commissioners in each year, to prepare and report to the village trustees true and correct statements of the receipts and disbursements of moneys, under and in pursuance of the provisions of this act, during the preceding year, in which account shall be stated under appropriate heads:

1. The moneys raised by the trustees, under the seventh section of this act;
2. The school moneys received by the treasurer of the village from the county treasurer;
3. The moneys received by the treasurer of the village under any provisions of this act;
4. All other moneys received by the treasurer of said village, subject to the order of the board, specifying the sources from which they shall have been derived;
5. The manner in which such sums of money shall have been expended, specifying the amount under each head of expenditure; and the board of education shall, ten days before such election, cause the same to be published in at least two of the newspapers of said village.

§ 19. The board of trustees shall have power, and it shall be their duty, to pass such ordinances and regulations as the said board of education may report as necessary for the protection, preservation, safe keeping and care of the school-houses, lots, sites, appurtenances and appendages, libraries and all necessary property belonging to or connected with the schools of said village, and to impose proper penalties for the violation thereof, subject to the restrictions and limitations contained in the act to incorporate the said village; and all such penalties shall be collected in the same manner as the penalties for the violations of the village ordinances are by law collected; and when collected shall be paid to the treasurer of the village, to the credit of the said board of education, and shall be subject to their order, in the same manner as other moneys raised, pursuant to the provisions of this act.

§ 20. It shall be the duty of the clerk of said village, immediately after the election of any person as commissioner of common schools, personally or in writing, to notify him of his election; and if any such person shall not, within six days after receiving such notice of his election, take and subscribe the constitutional oath, and file the same with the clerk of said village, the board of education may consider it as a refusal to serve, and proceed to fill the vacancy occasioned by such refusal; and the person so refusing shall forfeit and pay to the village treasurer, for the benefit of the schools of said village, a penalty of ten dollars. Said clerk shall notify the board of education, and the board of education shall proceed to fill the vacancy.

§ 21. The trustees of the Jefferson county institute are hereby authorized to lease for a term of years, or to transfer by proper deeds of conveyance to the village of Watertown, the institute property, real and personal, its appurtenances and hereditaments thereto belonging, in trust for school purposes; and the high schools under the supervision of the board of education shall be entitled to participate in the literature, academic and other funds appropriated for classical scholarships and for the instruction of common school teachers, upon making proper application therefor; and the usual reports for such purposes shall be made to the Regents of the University, and shall be subject to their visitation.

§ 22. So long as the said institute shall be leased to the village of Watertown for school purposes, the board of education may consist of two members, additional to those designated in section one, to be elected annually from and by the board of trustees of said institute, who shall qualify in the same manner as those mentioned in section one of this act.

§ 23. In case any school-house shall be destroyed by fire or otherwise than from usual wear and deterioration, so that in the opinion of the said board of education it shall be considered necessary to build another to supply its place, or to expend over five hundred dollars (\$500) for its repair, then, in order and for the purpose of rebuilding or repairing the same, a sufficient amount therefor may be raised by tax, additional to that authorized by section seven of this act to be levied and collected in the next following annual tax; but said additional amount shall not exceed six thousand dollars (\$6000) in any one year; and such tax shall not be imposed except it be authorized by a vote of two-thirds of all the members of the said board of education.

§ 24. At any time, when by vote at a regular meeting of the board of education, four-fifths of the whole number of said board being in favor of the same, and the same being certified by said board to the board of trustees of said village, the said board of trustees shall have the power, and it shall be their duty, to raise by tax, in the manner other taxes mentioned in this act are to be raised, such further amount of money as is determined by said four-fifths vote, in addition to the amount authorized to be raised by section seven of this act (but not in addition to the amount authorized to be raised by section twenty-three, in reference to destruction and damage by fire, and so forth), for the purpose of buying a site or sites, for building or buying a school-house or houses, or for either of these purposes; but the amount authorized by this section to be raised shall not exceed six thousand dollars in any one year.

§ 25. In case the village of Watertown should be incorporated as a city, with or without addition of territory, then this act shall apply to that incorporation the same as now to the village corporation, and the common council of said city shall take the place of the board of trustees, and shall be charged with all the responsibility and duties and privileges devolving upon said board of trustees by this act.

§ 26. The present school officers of the school districts of the territory embraced in this act shall continue in office until the unfinished business of said districts shall have been finally closed and settled, with all the powers and duties now imposed by law upon them, for the purpose of closing up such unfinished business.

### WATKINS.

[Chap. 69, Laws of 1863, p. 93.]

SECTION 1. All that part of the county of Schuyler, including the village of Watkins, comprised within and embracing the territory known as school district number one of Dix and Reading, in said county, shall hereafter, for the purposes named in this act, form a school district which shall be called "the Watkins union school district."

§ 2. The board of education hereinafter created shall have power, by resolution of said board, to alter and change the boundaries of said district by and with the written consent of the school commissioner of Schuyler county.

§ 3. The following named persons, to wit: Simeon L. Rood, Duncan S. Magee, Daniel Howard, Rev. F. S. Howe, Frederick Davis, Jr., and Tyler H. Abbey, together with George G. Freer, Orlando Hurd, and Marcus M. Cass (the three persons last named being the trustees of the existing Watkins academy fund, so called, left by bequest of Mrs. C. A. Freer, deceased), so long as they may respectively choose to act, and their successors to be chosen as hereinafter provided, are hereby constituted a corporation by the name of "the board of education for the village of Watkins." The three persons first named in this section shall hold their office until the first Monday of January, one thousand eight hundred and sixty-four; the three persons next named shall hold their office until the first Monday of January, one thousand eight hundred and sixty-five; and whenever a vacancy or vacancies shall occur in the case of one or more of the third class, or remaining three persons last named in this section, their place or places shall be filled in the same manner as is provided in the last will and testament of Mrs. C. A. Freer, deceased, or according to law in the cases contemplated by said will.

§ 4. The term of office of the trustees to be elected under the provisions of this act shall be three years from the first Monday of January next succeeding their election, and until their successors shall enter upon the discharge of the duties of their offices respectively. The annual meeting of the electors of said district shall be held on the first Monday of October in each year, at such time and place in said district as the board of education shall previously appoint. The president of the board, or in his absence the president for the time being, shall preside, and the district clerk, or in his absence the clerk for the time being, shall act as secretary thereof.

§ 5. At the annual meeting, in the year one thousand eight hundred and sixty-four, three trustees shall be elected to fill the places of the three persons first named in the third section of this act. The places of the next three shall be filled at the annual meeting in the year one thousand eight hundred and sixty-five, and annually thereafter, on the day above specified for the first election, there shall in like manner be elected three trustees, to fill the places of those whose terms of office shall next thereafter expire, as herein provided. Every officer elected under this act shall enter on the duties of his office on the first Monday of January next succeeding his election. Within ten days after any such election, the clerk shall certify to the board of education the names of the officers so elected.

§ 6. Said board of education and their successors in office, shall be a corporate body in relation to all the powers and duties conferred upon them by virtue of this act, or of any law, and a majority of the board shall form a quorum.

§ 7. There shall annually be appointed by said board of education, a clerk, collector, librarian and treasurer of said union district, who shall each, within ten days after receiving notice in writing of his appointment, and before entering upon the duties of his office, execute and deliver to said board of education a bond in such penalty and with such sureties as said board may require, conditioned for the faithful discharge of the duties of his office. In case such bond shall not be given within ten days after receiving such notice, such office shall thereby become vacated, and said board of education shall thereupon make an appointment to supply such vacancy.

§ 8. Notices for annual elections and all other meetings of said district shall be given by said board of education at least ten days before such election or meeting, by publishing such



notice once in each of the newspapers printed in the village of Watkins, and by posting the same on the door of each school-house in said district.

§ 9. In case any member of said board of education shall neglect or refuse to perform the duties of his office, or shall remove his residence beyond the boundaries of said district, or his place become vacant by any other incapacity, or by his resignation, or by death before the expiration of his term of office, said board shall make an appointment to fill such vacancy for the unexpired term, except as to the three trustees named in the said will.

§ 10. Said board of education shall possess all the powers and rights and be subject to all the duties in respect to said district, and all the schools under their charge, that the trustees of common schools now have or may possess or be subject to, and such other powers and duties as are given or imposed by law. The clerk, collector and librarian of said district shall possess all the powers and be subject to all the duties in respect to said district that like officers of common schools now have or may possess or be subject to, and such other powers and duties as are or may be given or imposed by law.

§ 11. From and after the first meeting of the board of education under this act, the office of trustee, librarian and collector in each of the school districts included within the limits of the said union school district shall be abolished, and the title of the property of the said school district, and of the said union district, real and personal, shall from thenceforth become the property of and be vested in the said board of education in its corporate capacity, as created by this act; and said board shall settle all business of the several school districts and parts of districts in said union district, then remaining unsettled.

§ 12. The said board of education shall, at its said first meeting, and annually thereafter at their meeting held next after the first Monday of January in each year, appoint one of their number president. The clerk of said union district shall act as secretary to said board. In the absence of either of said officers at any regular meeting of the board, a president and secretary may be appointed for the time being.

§ 13. The said clerk, in addition to such other duties as are or may be imposed on him by law or required of him by the board, shall keep a record of the proceedings of said board of education, which record, or a transcript thereof, certified by the president and secretary, shall be received in all courts and for all purposes as a presumptive evidence of the facts therein set forth.

§ 14. The said board of education shall have power and it shall be their duty:

1. To establish and organize a classical school in the village of Watkins to be known by the name of "the Watkins academy," which school shall be subject to the visitation of the Regents of the University of this State, and to all laws and regulations applicable to the incorporated academies thereof, and shall be entitled to all the privileges of such academies, and to share in the distribution of the moneys of the literature fund of this State as the academies thereof;

2. To establish and organize such and so many primary schools in said district, including for that purpose the common schools therein, as they shall deem requisite and expedient; and to alter and discontinue, or change and consolidate, the same;

3. To build, purchase or hire school-houses, rooms, lots or sites for school-houses, and to fence, improve, adorn and repair the same, as they may think proper. And the said board of education may by consent of the said trustees of the said will of Mrs. C. A. Freer, occupy and use for the purposes of this act, the building and lands and school apparatus and fixtures provided by the said trustees under the said will, in the academy now existing in the said village of Watkins;

4. Upon such lots or sites, and upon any lot or sites now owned by any school district within the limits of said union district erected by this act, to build, enlarge, alter, improve, adorn and repair school-houses, out-houses, and appurtenances, as they may deem advisable;

5. And the said board of education may take from the said trustees of the said will, a lease or conveyance of the said building and lands and apparatus and fixtures, and may enlarge, alter, improve, adorn, add to, and repair, the same. And they may take and receive from the trustees of the said will an assignment or transfer of any or all the funds and property resulting from said bequest, which when received they shall apply to the purposes of this act, either directly or by investing the same and using the income thereof for such purposes. But the power conferred by this section shall not be used or exercised in any manner inconsistent with the provisions of said will;

6. To purchase, exchange, improve and repair school apparatus, globes, maps, furniture and appendages, books for indigent pupils and for the school library, to provide fuel and lights and defray the contingent expenses of the schools of the board, the library, and the salary of the librarian and clerk;

7. To have the custody and safe keeping of the school-houses, out-houses and all the real and personal property of the said union school district and primary schools, and see that the ordinances and by-laws of said board in relation thereto be observed;

8. To contract with and employ all teachers in any of the schools under their charge, and in all branches and departments thereof, and at their pleasure to remove them;

9. To pay the wages of such teachers out of the public moneys and tuition fees received by them, and the deficiency, if any, out of the moneys to be raised by tax for general purposes of education under this act;

10. To fix the ratio of tuition fees in said academy, if any shall be charged, and to designate some person or persons to whom the same may be paid previous to issuing the warrant for the collection thereof, and, by a resolution of said board, to be recorded by the secretary, to exempt from the whole or any part of the tuition fees such persons as they may deem entitled to such exemption from indigence or any other sufficient cause, and to graduate such tuition fees according to the branches of instruction pursued;

11. To make out a rate bill as often as they shall deem proper, containing the name of each person liable to pay tuition fees for tuition in said academy, who shall not have paid the same prior to making out such rate bill, and the amount for which such person is liable, adding thereto a sum not exceeding five cents on each dollar for collector's fees (which fees shall be fixed by said board at the time of making out every rate bill), to annex thereto a warrant for the collection thereof, to be signed by the president of said board or a majority of the members thereof, and deliver the same to the collector, who shall collect the same in the same manner as collectors of school districts are by law authorized and required to execute like warrants issued by the trustees of common school districts, and who in the execution of the same shall be under the same protection, possess all the powers, and be subject to all the duties as such collectors may have or possess and be subject to, in respect to like warrants ;

12. To have in all respects the superintendence, supervision, management and control of all the schools mentioned or contemplated in and by the provisions of this act, to prescribe the course of studies therein, the books to be used, and establish a uniformity in respect to such course of study and books ; from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules, regulations and ordinances for the organization, government and instruction of such schools ; for the reception of pupils and their transfer from one school to another ; for the expulsion of any pupil from any of said schools for misconduct ; for the promotion of morals and good order in said schools, their prosperity and public utility ; for the protection, safe keeping, care and preservation of school-houses, lots, sites, fences, ornamental trees and shrubbery, and appurtenances, and all other property connected with or appertaining to such schools ; and to cause such rules, regulations, ordinances and by-laws to be printed and published, in such manner as they may deem best calculated to give general information.

§ 15. The said board of education shall forthwith employ a sufficient number of teachers, who shall be well qualified, and cause a school to be commenced called "the Watkins academy," in which shall be taught the higher branches of education ; and when, in their opinion, the welfare of said academy shall require it, shall procure a suitable lot, so situated as best to accommodate the whole of said union district, so far as practicable, and procure a clear title thereof, to be vested by deed in said board of education : to cause said lot to be properly graded, fenced, planted with trees, and otherwise properly improved ; to erect thereon a suitable and proper building or buildings and necessary out-houses ; to furnish the same with all proper, useful and necessary furniture, apparatus and appendages. All the other schools, excepting private schools in said union district, including the common schools therein, and which shall be under the charge of the board of education, shall be known as primary schools, in which no tuition fee shall be charged, nor any rate bill made out ; but the same shall be free schools. The said primary schools shall be used as preparatory schools for the instruction of children until they arrive at a certain age, or attain a certain proficiency in learning, who shall then be transferred, upon proper testimonials, into the academy aforesaid, the age, qualifications and testimonials to be prescribed by the by-laws, rules and regulations of the board of education.

§ 16. The said board of education shall have power, and it shall be their duty, to raise, from time to time, by tax upon all the real and personal estate within the bounds of said union district, which shall be liable to taxation for town and county charges, such sums of money as may be determined by resolution of said board to be necessary for any and all the purposes mentioned in this act, or to meet any deficiency connected with the subject of education in said district ; to provide for which, power shall be given to the said board by the provisions of this act, or any law relating to common schools, or the rules and regulations of the Superintendent of Public Instruction. Said board of education shall, at the commencement of each year, make an estimate by the best means in their power of the amount of money which will be needed for all the purposes of education, and other purposes provided for by this act, over and above the public money and moneys to be received from the other sources, if any, and shall cause the same to be raised by one assessment or warrant, and not more than two taxes for such purposes shall ever be raised in one year. For the collection of such taxes, the board of education may employ the village or town collector, at their discretion. The said board of education shall not have power to raise by tax, in any one year, for the purpose of this act, any further or greater sum than one thousand dollars, unless they shall be authorized to do so by a vote of a meeting of the persons qualified to vote in said union district for school district taxes, at an annual meeting of the said district, or at a special meeting of the inhabitants, to be called by the board of education for that purpose.

§ 17. For the purpose of carrying into effect the provisions of section fifteen of this act, the said board of education shall, as soon as practicable, make an estimate of the money which will, in their opinion, be necessary therefor, and shall assess, levy and collect the same, by tax upon the real and personal estate, as specified in section sixteen of this act ; and no such tax shall be laid unless by a vote of the tax payers of the district, at a meeting duly notified for that purpose. They shall, for this and all other taxes raised by them, make out a list, in the manner and form in which tax lists are required to be made by trustees of school districts, so far as such form is applicable, annex thereto a warrant in like form, signed by the president or a majority of the members of the said board, and deliver the same to the collector, which, when so made and signed, shall be as effectual, to all intents and purposes, as like tax lists and warrants when made by the trustees of the common school districts. Said board may, in respect to the collection of taxes, conform to the provisions of the twenty-ninth, thirtieth and thirty-first sections of chapter one hundred and eighty of Session Laws of one thousand eight hundred and forty-five, and require the collector to comply with the provisions of said section so far as the same are applicable. Said board

may make their warrants returnable at discretion, not less than thirty days nor more than ninety days from the issuing thereof. The said board may assess, levy and collect the amount of taxes to be raised under this section, in not less than three annual installments.

§ 18. All moneys to be raised by virtue of this act, and all moneys by law appropriated to or provided for said district, shall be paid to the treasurer of said board, who, together with the sureties on his official bond, shall be accountable therefor to the said board of education; said treasurer shall not pay out any of such moneys except by resolution of said board, and upon an order drawn by the president and certified by the secretary, to be so drawn in pursuance of such resolution.

§ 19. Special meetings of the board of education may be called by the president, or, in his absence or inability to act, by the secretary or any member of said board, as often as necessary, by giving personal notice to each member of the board, or causing a written or printed notice to be left at his place of residence at least twenty-four hours before the hour for such special meeting. No member of said board shall receive any pay or compensation for his services.

§ 20. The said board of education shall annually make a like report in all respects as required from trustees of common school districts to the school commissioner. Such report shall be received by the school commissioner instead of the reports now made by trustees of the school districts included in said union district. The supervisors of the several towns from which the said union district is taken, shall, in making their apportionment of school or library moneys, allot to said union district its proportion of said moneys according to law, regulating its apportionment to districts formed out of two or more towns, and the report of its board of education shall be regarded as the reports of its trustees. All such sums shall be paid by said supervisors to the treasurer of said board of education at the same time and in the same manner as to trustees of school districts. A copy of the reports of said board of education shall be filed with the clerk or secretary of the board. The board of education shall, at the close of each year, publish, in one or more of the village newspapers, a report of the moneys received and expended by them during the year, showing the sources from whence received and the objects of expenditure.

§ 21. Whenever, in the opinion of said board, a sale or exchange of any primary school-house or house and lot would be proper, said board may cause such sale or exchange to be made, and may buy a new site or may at any time build a new house for the accommodation of any portion of said district, when authorized thereto by a vote of the tax payers of said union district, to be called together as herein provided.

§ 22. All the school property of said board of education, real and personal, while used for and appropriated to school purposes, shall be exempt from all taxes and assessments, and shall not be liable to be levied upon or sold by virtue of any warrant or execution. Said board of education, in their corporate capacity, shall be able to take, hold and dispose of any real or personal estate, transferred to it by gift, grant, bequest or devise, for the use of said district or any schools under their charge. Said board shall not have power to sell, grant, dispose of or incumber said academy school lots. No portion of the library money paid to said board of education shall be expended for teachers' wages, but shall be appropriated exclusively for the increase and benefit of the library.

§ 23. All the lands included in the bounds of said union district shall be subject to taxation therein under this act, without regard to the residence of the owners thereof, and the board of education may cause them to be returned to the county treasurer in the same manner as trustees of common schools are authorized to return unoccupied and unimproved real estate of non-residents of their districts for unpaid taxes assessed thereon. Said county treasurer shall pay to said board the amount of such taxes out of any moneys in the county treasury not otherwise specifically appropriated, and such proceedings in all respects shall thereupon be had in relation to such taxes and lands as required by law in relation to such lands, when so returned by trustees of common school districts.

§ 24. The said board of education may permit children of persons not resident within said union district, to attend any school in said union district on such terms as they may prescribe; and said board may, in their corporate name, sue for and recover of the persons liable therefor, all such sums as shall be prescribed, with costs of suit.

§ 25. The taxes imposed by the provisions of this act, shall be a lien upon the lands taxed, to be enforced and collected by sale in the manner that county taxes are upon a return to be made by the collector to the treasurer of the county of all unpaid taxes in said district.

§ 26. Whenever any officer of the said union district, or of the said board of education, shall have paid any moneys in or about the prosecution or defense of any suit commenced by or against him, in the discharge of the duties of his office, or for acts done by color thereof, it shall be the duty of said board of education, unless it shall appear to them that the same were paid in consequence of the wilful neglect or misconduct of the claimant, to ascertain the amount thereof by the best means in their power, and to cause the same to be assessed upon and collected of the taxable inhabitants of said district, in addition to the sums authorized to be raised for school purposes in said district by this act, and when so collected to pay over the same to the person entitled thereto by virtue of this act.

§ 27. The provisions of sections twenty-two, twenty-three, twenty-four, twenty-five and twenty-eight, of chapter one hundred and twenty-nine, and of section three, chapter one hundred and eighty, Laws of eighteen hundred and fifty-six, shall apply to and form a part of this act.

## WEEDSPORT.

[Chap. 212, Laws of 1858, p. 334.]

SECTION 1. School district number eight, in the town of Brutus, Cayuga county, shall be hereafter known as "the Weedsport union school," and that shall be its corporate title, in which name all returns shall be made, contracts entered into, and its trustees and other officers shall be known as officers of "the Weedsport union school."

§ 2. There shall continue to be the same officers of the said district as of other common school districts, and with the same rights, privileges, powers and duties, except as herein-after provided.

§ 3. In addition to the officers now provided by law, there shall be in said district, not less than three nor more than nine officers, which number shall be determined by the legal voters of the district, at their next annual meeting, who shall be known as "the board of education" of said district, with such powers and duties as are herein provided, to be elected at the same time and in the same manner as the trustees of said district are elected, and to hold their offices, after the first election, for three years.

§ 4. The proceedings of the annual meeting in said district, in October, eighteen hundred and fifty-seven, in the election of a board of education, are hereby confirmed, and the persons then elected as such board shall continue to hold those offices for the time at that meeting designated for each, and at each annual meeting in said district hereafter, one-third of the members of said board shall be elected in place of such of them whose term of office shall then expire, and, in case of an increase of their number at the next annual meeting, the number added shall be then elected, and lots drawn by the other members, to determine the length of time which each shall hold, so as to have one-third of them go out of office each year, and a majority of them shall, for all purposes, constitute a quorum for the transaction of business.

§ 5. The board of education, by this act established, shall have power:

1. To pass such by-laws as they shall deem proper for the regulation and exercise of their lawful business and powers, and for the regulation of the school;

2. To fill any vacancy which may happen in said board, until the next annual meeting;

3. To have in all respects the superintendence, management and control of said union school; to establish in the same an academic department whenever in their judgment the same is warranted by the demand for such instruction; to receive into said district any pupils residing out of the district, and to regulate and establish the tuition fees of such non-resident pupils in the several departments of the school; to regulate the transfer of scholars from one department to another, and from class to class, as their degree of scholarship may warrant, and to direct what text books shall be used therein;

4. To graduate the amount of the rate bill in said district, upon the scholars attending the several departments of said school, in proportion to the amount of wages paid to the teacher of each department, making all proper allowance for the superintending charge of the principal of the school over the whole;

5. To contract with and employ such teachers, and such numbers of teachers, as they shall deem necessary and competent, in the several departments of instruction in said school; to remove them at any time for incompetency, neglect of duty, immoral conduct, or want of adaptation to their position, and to require them to conform to such rules and regulations as they shall make in reference to the school;

6. To expend the library money of the district in the purchase of such books as they may deem best, and to appoint a suitable person as librarian and make such rules and regulations for his government, and the control and management of the library and apparatus of the school as they shall think proper.

§ 6. It shall be the duty of each member of the board of education to visit every department of the school at least twice during each term, and for the board to meet from time to time, as occasion may require, during each term, to attend to the interests of the school.

§ 7. The academical department, established under the provisions of this act, shall be subject to the visitation of the Regents of the University, and shall be subject, in its course of education and matters pertaining thereto (but not in reference to its buildings), to all the regulations made in regard to academies by the said Regents. In such department, the qualifications for the entrance of any pupil shall be the same as those established by the said Regents for the admission into any academy of the State under their supervision.

§ 8. Nothing herein contained shall be so construed as to affect the supervision of said school by the commissioners of common schools of the commissioner's district in which it is located, but the same shall, for all purposes, except as herein expressed, be and remain as one of the common school districts of the said town of Brutus.

§ 9. All contracts made by the trustees and by the board of education shall be made in the name of "the Weedsport union school," in which name shall all suits be prosecuted and defended, and the trustees shall represent the body corporate, in all suits and legal proceedings, and the service of process upon either one of them shall be sufficient to commence an action against the corporation.

§ 10. All the real estate and personal property, rights, privileges and powers of the said school district number eight, are hereby vested in and shall belong to the said "the Weedsport union school."

§ 11. All the powers, duties and obligations not herein expressly conferred upon the board of education shall remain with the trustees of the district, the same as though this act had not been passed.

## WEST FARMS.

[Chap. 407, Laws of 1864, p. 978.]

SECTION 1. The town of Morrisania shall constitute a separate and entire school district, and as such be subject to the provisions of chapter three hundred and sixty-five of the Laws of eighteen hundred and fifty-three, and of any amendments of such act, and the board of education in such district shall be known as the board of education of the school district of the town of Morrisania.

§ 2. All that part of the town of West Farms which is not included within the limits of school district number two of said town is hereby created a school district, which shall be known as school district number one of the town of West Farms.

§ 3. The district mentioned in the second section of this act, shall be under the direction of a board of officers to be styled the board of education of school district number one of the town of West Farms, and they are hereby constituted a body corporate, in relation to the powers and duties conferred by this act, and shall possess the general powers, and be subject to the liabilities and restrictions imposed by the eighteenth chapter of part first of the Revised Statutes. They shall possess the general powers and be subject to the duties in respect to said district that the trustees and boards of education of free schools now possess, or are subject to, together with such other powers and duties as are given and imposed by this act.

§ 4. The said board shall consist of six members, a majority of whom shall constitute a quorum to do business, and John B. Haskin, Matthew McKeon, Frederick W. Devoe, Henry T. Mall, John Berrian, and Ralph L. Anderton shall constitute the first board of education of school district number one, of the town of West Farms, and shall hold office, the first two named for three years, the second two named for two years, and the last two named for one year, from the first day of May eighteen hundred and sixty-four; and as their terms of office shall severally expire, the vacancies therein shall be filled for a term of three years, at a special meeting of qualified voters of the said district, which shall be held on the second Tuesday of April immediately preceding the expiration of term; and vacancies, happening otherwise than by expiration of term, shall be filled by the board until the period shall arrive for filling the vacancy by election, and such special meeting shall be held in manner provided by law for meetings of school districts.

§ 5. The board shall meet for the transaction of business once in each month, and special meetings may be called by the president, or a majority of the board, written notice of which special meeting shall be left at the residence of each member at least forty-eight hours before the time of meeting. If any member of the board shall fail to attend for three successive stated meetings, the board may declare his office vacant. No member of the board shall receive any compensation, nor shall any member be in any way directly or indirectly interested in any contract, or in any appropriation or expenditure for repairs, improvements or supplies for the schools of the districts; and any member or other person violating this provision, shall forfeit five hundred dollars to the board of education, to be prosecuted for by said board, and to be recovered for and applied to school purposes.

§ 6. The said board of education, at their first meeting, shall select one of their number as president of the board, one for secretary, and one for treasurer; they shall severally hold office for one year, and until their successors shall be appointed, and the treasurer shall give security by bond, in such amount, and with such sureties as the board may, from time to time, by resolution, direct, which bond shall be conditioned for the faithful performance, by the treasurer, of the duties of his office, for the faithful application of all moneys which may come to his hands, and shall be filed with the clerk of the county, and the receiver of taxes of the town of West Farms shall pay all school taxes collected by him to such treasurer. In the absence of the president or secretary from any meeting, the board may select such officers *pro tem.*, and a record or transcript of the proceedings of the board, by the president and clerk, shall be received in all courts as *prima facie* evidence of the facts therein set forth.

§ 7. The said board of education shall, at each annual meeting of the board of town auditors, submit a report of the doings of the board for the year preceding, including the number and condition of the schools under their charge, the number of scholars, and the receipts and expenditures in detail, and may cause such statement to be published in a newspaper printed in the district, or, if none be published therein, then in a newspaper printed in any adjoining district.

§ 8. The said board of education are hereby authorized and directed to prepare, on or before the first day of November in each year, an estimate of the amount of money required for the yearly expense of maintaining, repairing and establishing free schools in the district, and to deliver such estimate to the supervisor of the town, who shall place the same before the board of supervisors of the county at their meeting following the preparation and delivery of such estimate, and the amount thereof shall be subject to revision by said board, and upon revision or confirmation shall be levied and assessed by said board of supervisors upon the taxable property of said town comprising such school district, in the same manner as other annual taxes are levied and assessed; and such moneys, to be denominated the annual school tax of said district, shall be collected and paid as hereinbefore directed in section five.

§ 9. Upon the organization of said board of education, and the appointment and qualification of the treasurer, the trustees, officers and treasurer of school districts, or of the board of education of the school districts within the boundaries of the district hereby formed, shall transfer and deliver to such board of education all books, papers and property

of the schools in their custody or within their control, and shall pay over to the treasurer of the board all moneys unexpended, and the title, control and management of all school-houses, lots and school property within the said district hereby formed, is vested in the said board of education established by this act; and the said board, in its corporate capacity may take and hold and dispose of any property, real or personal, transferred to it by gift, grant or bequest, for the use of the schools of said district.

§ 10. The said board of education may make all necessary by-laws for their own government, and by resolution, certified by the secretary or president, and shall direct the treasurer as to all expenditures, and the disposition of all moneys of the district, and may make a proper compensation for the treasurer's service.

§ 11. Any act, or part of act, which may not be consistent with the provisions of this act, shall not apply to the board of education hereby formed, and the provisions of this act shall not apply to school district number two of said town of West Farms.

## YONKERS, DISTRICT NO. 2.

[*Chap. 284, Laws of 1861, p. 654.*]

SECTION 1. That school district number two, in the town of Yonkers, Westchester county, with the boundaries as established by law in eighteen hundred and fourteen, with all subsequent alterations as now recognized, up to the passage of this act, shall be, and the same is hereby divided as follows: Beginning on the Hudson river, at a point opposite the mouth of the Nepperham river, and running thence easterly along the center line of said Nepperham river, to the middle of the extension of Warburton avenue; thence along the middle of said extension, northerly two hundred and fifty feet, to the middle of Dock street; thence along the middle of Dock street, easterly, and crossing Broadway, about two hundred feet, to the south-easterly corner of a brick building belonging to Robert P. Getty; thence along the southerly end of said building, and along land of Ralph Shipman, easterly four hundred and seventy-five feet, to the middle of Locust Hill avenue; thence along the middle of Locust Hill avenue, northerly four hundred and fifteen feet, to a point in a line, continuous with the boundary line between lands of John T. Warring and William C. Warring; thence along said boundary line, and on a line continuous therewith, easterly six hundred and fifty feet to the middle of said Nepperham river; thence along the middle of the said Nepperham, as it winds and turns, northerly and easterly, about three thousand feet, to the centre line of the Croton aqueduct property; thence along said centre line easterly, to the westerly boundary of district number four.

§ 2. All the present district number two, north of said division line, shall be a separate district, known as district number six, and shall be subject to the laws establishing union free schools, with the amendments now in force, and all that part of said district south of said division line, shall continue, and be known as district number two, as formerly created and established by law, and shall also be subject to the laws in relation to union free schools.

§ 3. The names of the persons who shall and do hereby constitute the board of education for said district number six, are John M. Mason, George B. Upham, Isaac H. Knox, Ethan Flagg, Justus Lawrence and Peter F. Peek, who shall take possession and charge of all school-houses, sites, lots, furniture, books, apparatus and all school property within the said school district, and in whom, by this act, the title to all school property, of whatever name or nature, within the said district number six, shall be vested, and who shall possess and exercise all the powers conferred upon said board, under the union free school act, and who shall continue in office until the second Tuesday of October next, or until their successors are appointed.

§ 4. The board of education of school district number six, as constituted by this act, is hereby authorized and empowered to purchase a site, or sites, and erect a new school-house or houses, to sell or exchange and convey the school-houses, lots or sites, or either or any of them, now belonging to, or that may hereafter be vested in the said board, whenever the said board, or a majority of them shall deem such purchase, sale or exchange advisable. All moneys arising from such sale or sales, or from such exchange, shall be appropriated by said board, to the purchase of another site or sites, or the building, furnishing or improvement of sites or school-houses now existing.

§ 5. The said school district number six, as established by this act, shall be entitled to receive its full share of school moneys derived from the distribution made by the Superintendent of Public Instruction, and the said board of education shall appoint a treasurer for said district number six, whose duty it shall be to demand, receive and disburse, when legally called upon, all the funds to which said district shall be entitled. The board of education of said school district number two, shall pay over to said board of education of school district number six, all moneys now raised or received, or hereafter to be raised or received, which have been directed by the last regular meeting of the taxable inhabitants of said district, to be expended within the boundaries of district number six, as hereby constituted, for the building of a school-house or houses, upon an order signed by the president, and countersigned by the clerk of the board of education of said district number six. Said board of education, of said district number two, shall, in like manner, pay over to said board of education, of district number six, one-third of all such moneys as shall have been collected in said district number two, for defraying the general expenses of the union free school or schools, during the unexpired portion of the current year, after the passage of this act, which last mentioned moneys, shall be appropriated and expended for the main-

tenance of a school or schools in said district number six, during the residue of the present school year.

§ 6. All the provisions of law, now applicable to the said school district number two, as hereby proposed, and the officers thereof, shall remain as at present existing, except when the same are repealed, changed or modified by this act.

### YONKERS, DISTRICT No. 6.

[*Chap. 75, Laws of 1862, p. 222.*]

SECTION 1. George B. Upham, Isaac H. Knox, Ethan Flagg, Justus Lawrence, Peter F. Peck, and John M. Mason, are hereby appointed and declared to be trustees of school district No. six, in the town of Yonkers, and to constitute the board of education of said school district. The said board shall, at its first stated meeting after the passage of this act, divide the said trustees by lot into three classes, each class to consist of two trustees, and to be denominated, respectively, class No. one, No. two, and No. three. The term of office of the trustees forming such classes shall expire respectively in the order of the number of such classes, on the third Tuesday of October, in each of the years eighteen hundred and sixty-two, eighteen hundred and sixty-three and eighteen hundred and sixty-four, or as soon thereafter as their successors are elected.

§ 2. At the annual meeting of the taxable inhabitants and legal voters of said school district No. six, there shall be elected two trustees of such district, who shall be members of said board of education, and who shall enter upon the duties of their office on the Tuesday succeeding their election, and shall hold their respective offices until the third Tuesday of October, in the third year after their election, or until their successors are elected. In case any vacancy shall occur in said board by reason of death, resignation, removal, refusal to serve, or from any other cause, the remaining members of said board shall be authorized to fill such vacancy, and the persons so elected to fill such vacancy shall hold his office until the next annual meeting of such district, at which meeting there shall be elected a trustee or trustees for the unexpired term or terms to which the party or parties whose office or offices had become vacant would have been entitled.

§ 3. The board of education in said district shall call special meetings of said district whenever they may deem it necessary, or whenever petitioned therefor by twenty-five taxable inhabitants of said district, by a petition in writing, stating the object of such meeting. Notice of such special meetings, stating the time and place and object thereof, shall be given by posting such notice in at least five public places in said district, two weeks before the time appointed therefor, and by publishing the same once in each week, for two weeks successively, prior to the time fixed therefor, in all the public newspapers published in said district.

§ 4. The annual meeting of the taxable inhabitants and legal voters of said district, shall be held on the second Tuesday of October, in each year, and unless the time and place of such meeting shall have been fixed by vote of a previous meeting, the same shall be held at eight o'clock, in the evening, at some public place in the district, to be designated by the board of education.

§ 5. The said board of education may make all necessary by-laws for their own government. They shall hold their annual meeting on the third Tuesday of October, in each year; they shall appoint their own officers, and also a collector and treasurer for the said district; they shall hold stated meetings for the transaction of business at least once in each month, and at such meetings appoint a committee of not less than two of their own number, to visit the schools of the district, and such committee shall visit all such schools at least once in each month, and report at the next stated meeting of the board, on the condition and prospects thereof. No member of said board shall receive any pay or compensation for his services as such member, nor shall he become a contractor for making any improvements or repairs in or about school property of the district, or furnishing any supplies therefor, nor shall he be directly or indirectly interested in any such contract. All contracts made in violation of this provision shall be absolutely void.

§ 6. The fourth section of the act entitled "An act to divide school district number two of the town of Yonkers into separate districts, and to constitute and define the powers of the board of education in the new district," passed April seventeenth, eighteen hundred and sixty-one, is hereby amended so as to read as follows:

§ 4. Whenever, in the opinion of the board of education of school district number six, it may be advisable to sell or exchange any of the school-houses, lots or sites, now or hereafter belonging to or vested in said board, they shall report a proposition therefor to an annual or special meeting of the district. The said board shall have power, with the consent of a majority of the taxable inhabitants present at such meeting, to sell, convey or exchange any of the said school-houses, lots or sites, in the manner that such meeting may approve; but no such sale shall be made without the concurrence of a majority of the taxable inhabitants present and voting at such meeting, and a majority of all the members of the said board of education. All moneys derived from any such sale or exchange shall be appropriated by the said board to the purchase of another site or sites, or the building or improvement of school-houses, or the payment of any debt or debts incurred for the purchase, building or improvement of sites or school-house existing at the time of such sale or sales.

§ 7. The taxable inhabitants of said district, at any annual, special or adjourned meeting may vote to authorize such act or acts, and raise such sum or sums of money as they may deem expedient for the purpose of purchasing a site or sites and building a school-house or houses, and purchasing and leasing any suitable lot or lots and building or buildings for school purposes, and of making alterations and improvements with reference to site or structure, and for buying apparatus, furniture, fixtures, school books and stationery, and for contingent expenses of the said schools, and for such other purpose as they may, by a vote of the majority of the taxable inhabitants present at such meeting, approve, and to direct the trustees to cause the sums voted to be levied and raised by installments, or directly by tax; and such trustees shall make out a tax list, in the manner prescribed by law, in case of school district taxes, and direct such taxes and such installments to be levied and raised as directed by such meeting. And the taxable inhabitants of such district shall have no power to rescind the vote to raise such money, or to reduce the amount at any subsequent meeting, unless the same be done within thirty days after the same shall have been first voted.

§ 8. In case the taxable inhabitants of the said district shall not at their annual meeting vote to raise a sum of money for the payment of teachers' wages, and for procuring the necessary books and stationery, apparatus, fuel and furniture for the schools then in the district, and carrying on the same until the second Tuesday of October then next ensuing, and for the payment and interest on loans to become due prior to such time, which shall, in the judgment of the said board of education, be sufficient for such purposes, the said board are hereby authorized and required to levy and raise by tax such sums as may be necessary for such purposes or any of them, during the then current school year, in the same manner as if such sum or sums had been authorized by the said taxable inhabitants, to be raised according to the then existing provisions of law.

§ 9. The title to the sites, buildings, furniture, apparatus, and all other district school property in the said district, is hereby vested in the said board of education, and the same, while used for and appropriated to school purposes, shall be exempt from all taxes and assessments of every nature and kind whatsoever, and shall not be liable to be levied upon or sold by virtue of any warrant or execution.

§ 10. The said board of education are hereby authorized and empowered to borrow the sum of four thousand dollars for the purpose of anticipating the collection of the tax of four thousand dollars, authorized by the last annual meeting of said district, to be raised for the completion of the school building now in process of erection therein, and of grading, fencing, flagging and improving the school site, and paying off the mortgage now existing thereon, and to give their corporate bond for the payment of the said sum, and the interest thereon, at the time and times authorized by such meeting, and to mortgage the whole or any part of the school property of the district to secure the payment of the said bond; such mortgage to be executed under the corporate seal of the said board, and to be signed by their president and clerk, and such moneys so borrowed shall be appropriated in the manner directed by the said last annual meeting of the said school district.

§ 11. All the provisions of law now applicable to the said school district and the officers thereof, shall remain as at present existing, except as the same are changed, repealed, or modified by this act.



## BROOKLYN.

*Chap. 279, Laws of 1857, p. 569, vol. 1.*

SECTION 11. The board of education of the city of Brooklyn shall have power to organize and establish a Normal School for the training and instruction of teachers. The said board may make use of the public school-houses under their charge for such school, and the expense thereof shall be defrayed out of the general school fund of said city.

## THE CORNELL UNIVERSITY.

Chapter 585, Laws of 1865, establishing the Cornell university, contains a section which is intimately connected with popular education and the common schools. This section is as follows:

§ 9. The said departments of study in the said university shall be open to applicants for admission thereto at the lowest rates of expense consistent with its welfare and efficiency, and without distinction as to rank, class, previous occupation or locality. But, with a view to equalize its advantages to all parts of the State, the institution shall annually receive students, one from each Assembly district in the State, to be selected as hereinafter provided, and shall give them instruction in any or in all the prescribed branches of study in any department of said institution, free of any tuition fee, or of any incidental charges, to be paid to said university, unless such incidental charges shall have been made to compensate for damages needlessly or purposely done by the students to the property of said university. The said free instruction shall, moreover, be accorded to said students in consideration of their superior ability, and as a reward for superior scholarship in the academies and public schools of this State. Said students shall be selected as the Legislature may, from time to time, direct, and until otherwise ordered, as follows: The school commissioner or commissioners of each county, and the board of education of each city, or those performing the duties of such a board, shall select annually the best scholar from each academy and each public school of their respective counties or cities as candidates for the university scholarship. The candidates thus selected in each county or city shall meet at such time and place in the year as the board of supervisors of the county shall appoint, to be examined by a board consisting of the school commissioner or commissioners of the county, or by the said board of education of the cities, with such other persons as the supervisors shall appoint, who shall examine said candidates and determine which of them are the best scholars; and the board of supervisors shall then select therefrom to the number of one for each assembly district in said county or city, and furnish the candidates thus selected with a certificate of such selection, which certificate shall entitle said student to admission to said university, subject to the examination and approval of the faculty of said university. In making these selections, preference shall be given (where other qualifications are equal) to the sons of those who have died in the military or naval service of the United States; consideration shall be had, also, of the physical ability of the candidate. Whenever any student, selected as above described, shall have been, from any cause, removed from the university before the expiration of the time for which he was selected, then one of the competitors to his place in the university from his district may be elected to succeed him therein, as the school commissioner or commissioners of the county of his residence, or the board of education of the city of his residence, may direct.

In reference to the duties of school commissioners and supervisors, the Superintendent issued the following circular:

STATE OF NEW YORK,  
DEPARTMENT OF PUBLIC INSTRUCTION, }  
ALBANY, Dec. 20, 1867.

I call the attention of school commissioners and supervisors to the act relating to the Cornell university. The plans proposed for its management, while they omit nothing which is essential to a good education, include all the practical sciences, some of which have had no place as yet in any considerable number of modern colleges. That of agriculture will be a specialty. Students will be taught geology, mineralogy and chemistry with direct reference to their connection with the cultivation of the soil. The large farm attached to the university will afford visible illustration of the manner of conducting operations throughout the year, and from one year to another.

The study of mechanics will also be aided by extensive workshops, in which pupils may become skilled in the use of the tools and implements employed in various handicrafts. It will be one of its chief aims to turn out young men fitted to take charge of manufactories, machine shops, mills, mines—thus to aid in developing the industrial resources of the nation.

The great feature of the university will be, however, its optional course of study. We are assured that it will not be a tread-mill in which every pupil will be required to take the same steps. Young men will be permitted to select from the general course such studies as may suit their tastes and desires, or as may be adapted to fit them for the pursuits or vocation which they design to follow. They will be advised and directed in the choice of studies, and not compelled to waste time and labor upon those not essential to the calling of their inclination; nor be left to wander, unguided, in uncongenial paths. If a desire for military acquirements assumes control of the student's mind, by his side will be a master of military tactics; if a knowledge of political philosophy be his ambition, superior intelligence will direct him in its acquisition; if he would be a successful tiller of the soil, by making "the good seed yield, some fifty and some an hundred fold," competent professors will encourage and assist him in his preparation; if he aspires to be an accomplished workman in wood or iron, he will be aided by experienced and skillful artisans, from whom he may learn how to compete successfully with the mechanical skill of the world; or, if he would follow any of the "learned professions," departments will be provided in which he may lay broad and deep those foundations of knowledge upon which in the future he may build as high as human ambition can hopefully aspire.

The Cornell university is not founded mainly, nor in any sense, to give theological instruction. There will be no rule excluding from its faculty and classes men and pupils of any creed or faith. It will be the duty of the faculty to instruct students in the great and simple principles of morality as taught by nature and revelation, and in the secular knowledge proper to each department, but theological tenets will not be intruded upon their minds. Their instruction in these matters will be left to their parents and such other persons as may be chosen for their spiritual advisers. It must be decidedly understood that the pupils at the university will be subject to the watchful care and superintendence of the faculty, which will be composed of men of unexceptionable character; that vicious and mischievous young men will not be suffered to remain in the institution, and that, as it will not depend for its existence upon tuition fees, there will be no hesitation in expelling unruly and immoral students.

The endowment of the university will be ample. It will start with an annual income sufficient to defray all of its expenses. The unprecedented liberality of Mr. Cornell places it on a secure foundation, and the State, by bestowing upon it the magnificent land grant of Congress, has put it beyond the danger of want or failure.

It will be seen by reference to the law that from the number of candidates may be appointed annually in each county as many as there are Assembly districts; that those so appointed will be entitled to admittance into the institution as State pupils, without charge for tuition; that they may enjoy all its privileges, and if need be share in the degree of aid that will be given to those unable to provide for their necessary expenses. Labor on the farms or in the workshops will yield a partial support, and diligence in study and good conduct will secure substantial assistance.

If any one thinks the number to be appointed small, and hardly deserving the consideration of the school commissioners and supervisors, let him remember that there are 128 Assembly districts in the State, and that the number in the university as State pupils, if they should only remain for a three years' course, would be 384. If, however, some should remain four years and longer, in order to perfect themselves in particular studies, it may well be presumed that the State pupils will in time number at least five hundred in constant attendance. Very few colleges in this country have five hundred students. A tuition fee of fifty dollars a year for such pupils is a moderate estimate. The Cornell university, therefore, is required by law to give gratuitous instruction to not less than five hundred students, at an annual expense of \$25,000. But it proposes to do more, by way of loan, to enable worthy and diligent youths to pursue their studies without interruption, upon their promise to pay after they shall be established in business. The endowment of the university will soon warrant the use of a large sum of money annually in such loans, and the belief is entertained that the losses of money thus advanced would be comparatively small, for the debt incurred would be regarded as a debt of honor, to be paid out of the first fruits of the education so obtained. It may also be mentioned that, by private donations, premiums will be offered to students making the best progress in various studies according to a plan detailed in the university circular of announcement, varying from ten to fifty dollars each, and amounting in all to over seven hundred dollars.

This university will be liberal in its encouragement to students, and the supervisors and commissioners should not stop with the appointment of the quota of pupils to which their respective counties may be entitled. They should use their influence to induce other meritorious and promising young lads who may be candidates at the examination to become students at this or some other university. An earnest and encouraging word or suggestion from them may lead many of the unsuccessful but meritorious applicants to share in a liberal culture. The competition for appointment was not devised merely nor chiefly for the benefit of the appointees, but for the benefit of a great multitude of young persons whose minds will be inspired to nobler efforts and awakened to higher aspirations by the preparations which will be going on in the schools for months previous to each examination, by the inquiry itself, and by the honors and superior privileges conferred upon those who are successful.

The commissioners are advised to send a circular to the trustees of all the common schools and academies in their respective districts, notifying them of this prospective examination, and urging them to call the attention of their teachers and schools to it. They are also directed, in their annual round of visits to schools, to call the attention of local school officers, parents, teachers and pupils, to the facilities which this university will offer for the acquisition of a sound and useful education. Let no school be overlooked.

Each worthy young lad has a right to know that he may compete for the honor of representing his Assembly district in the Cornell university.

It is suggested that the steps of the commissioners, to give full effect to the law, be substantially in the following order:

1. To prepare and send forthwith to the sole trustees, and all the boards of trustees of common schools and academies, within their respective commissioner districts, a circular letter, with the announcement of the trustees of the university, informing them of the examination and its purposes, and soliciting their generous co-operation in directing the attention of teachers, pupils and parents to the university, and to the steps necessary for the preparation of students for participation in its superior privileges.

2. In their round of personal visitation of the schools to repeat *viva voce* to the trustees the purpose of the circular, to urge upon parents, teachers and schools the importance of early and continued preparation, not for the sake merely of a hoped for success, but for the sake of the healthful influence of the effort upon both people and schools. At the same time, the commissioners may deem it best to notify the schools that they will, on some future day, select candidates for the examination, upon evidence of their qualifications shown by a personal inquiry; or, if this be impracticable, upon the recommendation of the teachers and trustees. The choice of candidates may be deferred till after the appointment of examiners by the board of supervisors; but when made the commissioners should notify each candidate thereof in writing, and also of the time and place chosen for the examination.

3. To see to it that the supervisors, at their next meeting, do appoint proper persons to assist in the examination, and that at the earliest day practicable in the ensuing fall they name the time and place for it to be held.

4. To invite the persons appointed by the board of supervisors to meet for the purpose of organization, consultation and agreement upon the character and manner of the examination, keeping in view the requirements for admission into the university as set forth in the announcement of its trustees.

The number to be selected by the commissioners for the competition is not limited, but it is believed that the board of examiners should recommend to the board of supervisors for appointment those only who shall have passed a thorough examination and shall possess not merely the qualifications of good scholarship and good morals, but also the physical health and robustness of constitution which will enable them to pursue, steadily and to the end, the course of study prescribed or selected.

V. M. RICE,

*Superintendent of Public Instruction.*

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## EDGEWATER.

*Laws of 1866, chap. 214, title 3, § 1, subd. 16, p. 441, as amended by Laws of 1867, chap. 517, p. 1400, vol. 2, title 3, § 1, subd. 16.*

SECTION 16. The board of trustees of the village of Edgewater shall be trustees of the public and district schools within the limits of said village; shall have the sole control and management of the same, and of all the finances and real estate belonging to said schools; shall regulate the districts attached to said schools, appoint and cause to be examined the several teachers, and regulate all matters connected therewith; and the trustees superseded by this act shall immediately give up all books and funds in their custody, and render their accounts to the said trustees of the village of Edgewater. All the public and district schools in said village are hereby created free schools, and the board of trustees of said village shall have the same powers as the board of education had in the act to establish free schools in district No. 1 of the towns of Castleton and Southfield, in the county of Richmond, passed April 10, 1855.

SEC. 29. The official acts of the trustees of common schools within the limits of the said village are hereby legalized.

The statute does not, in terms, make the village of Edgewater a separate school district, but it does so by implication. The village trustees are also charged with all the duties, and are subject to all the responsibilities of school district trustees. It will, therefore, be their duty to make the reports annually required of trustees of school districts.

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## TOWN TAXATION.

TOWNS MAY RAISE MONEY FOR THE SUPPORT OF SCHOOL BY VOTE IN TOWN MEETING.

1. By sections 16, 17 and 18, Rev. Stat., chap. 15, art. 2, title 2, part 1 (see 3d ed., pp. 529, 530), the boards of supervisors were required to raise annually, by tax upon each town, a sum of money equal to the school moneys apportioned to such town. The school moneys apportioned prior to 1851 were the revenues of the common school fund and United States deposit fund, appropriated annually for the support of common schools.

2. By subd. 3, § 9, of chap. 9, title 2, part 1, Rev. Stat. (see p. 388, 3d ed. Rev. Stat.), the electors of every town in town meeting had power "to direct such sum to be raised in such town, for the support of common schools for the then ensuing year, as they may deem necessary, but not exceeding a sum equal to the amount required by law to be raised therein for that purpose."

3. By section 9, chap. 151, Laws of 1851, p. 292, Sess. Laws, sections 16, 17 and 18, Rev. Stat. (above mentioned), were repealed.

Did this repeal take from the towns the power to raise money for schools? Was not the rule governing the amount to be raised changed and the power to raise the money left intact to be governed by a new rule? Chap. 151, Laws of 1853, required a State tax to be levied of \$800,000. A subsequent act, chap. 180, Sess. Laws of 1856, p. 296, made the tax three-quarters of a mill on every dollar of valuation. Chap. 406, Laws of 1867, § 3, makes this tax one and a quarter mills upon the dollar.

Have not the towns severally power to raise, for the support of schools, an amount equal to the State school tax levied upon them?

Banks' ed. of the Revised Statutes, vol. 1, p. 817, omits subd. 3 above mentioned, giving towns the power of taxation, and a note appended states that it was repealed by chap. 151, Laws of 1851, above mentioned. The omission was an error. The law authorizing towns to raise money for the support of schools by a vote in town meeting is not repealed directly, nor by implication. "The amount required by law to be raised therein for that purpose" is one and one-fourth mills on each dollar of valuation, and they may now raise any sum not exceeding that amount. A vote of the people in town meeting would authorize and require the board of supervisors to levy on the property of the town, as assessed, the sum voted, not exceeding the amount of the State tax for schools as apportioned by the Comptroller.

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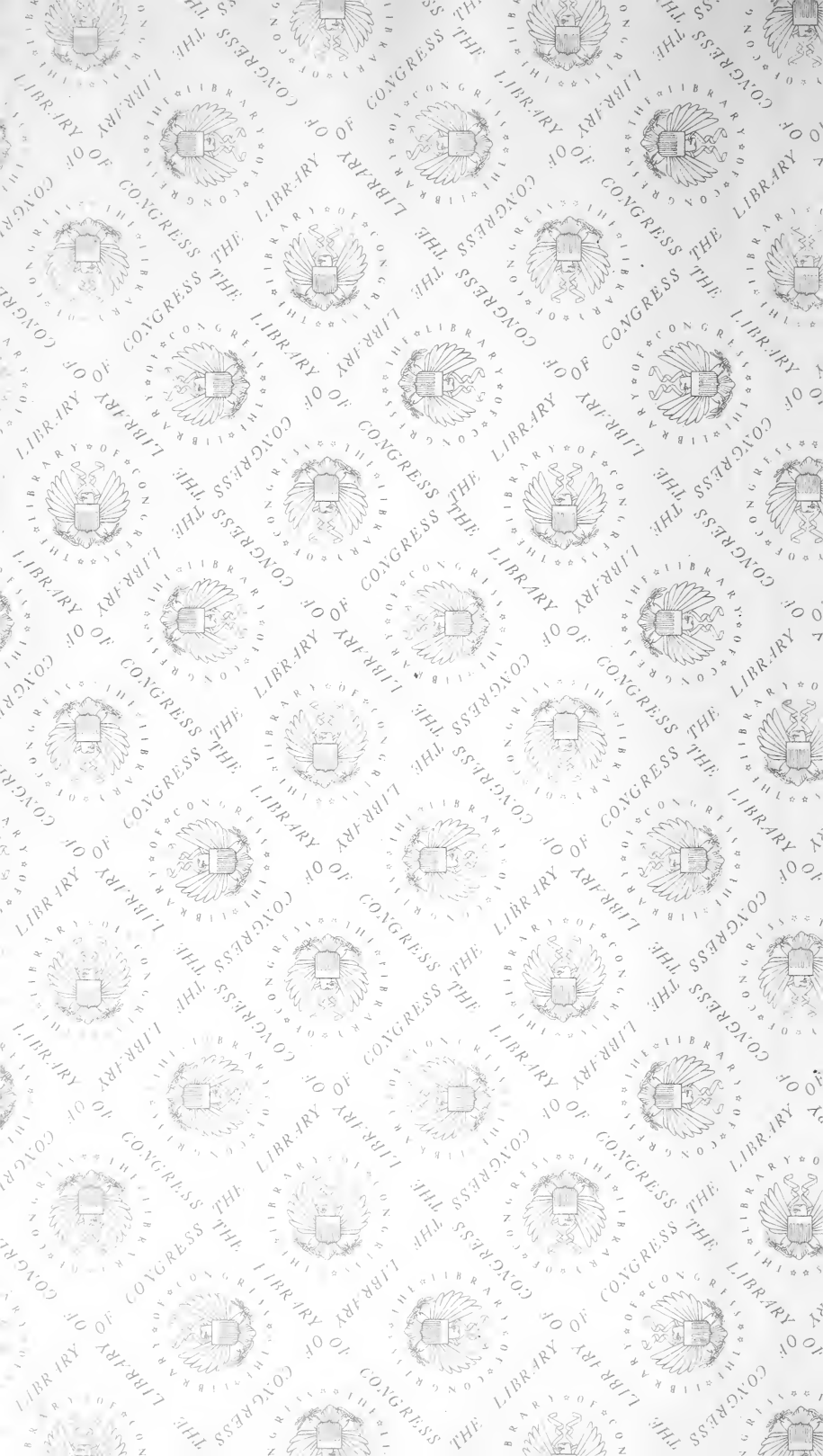
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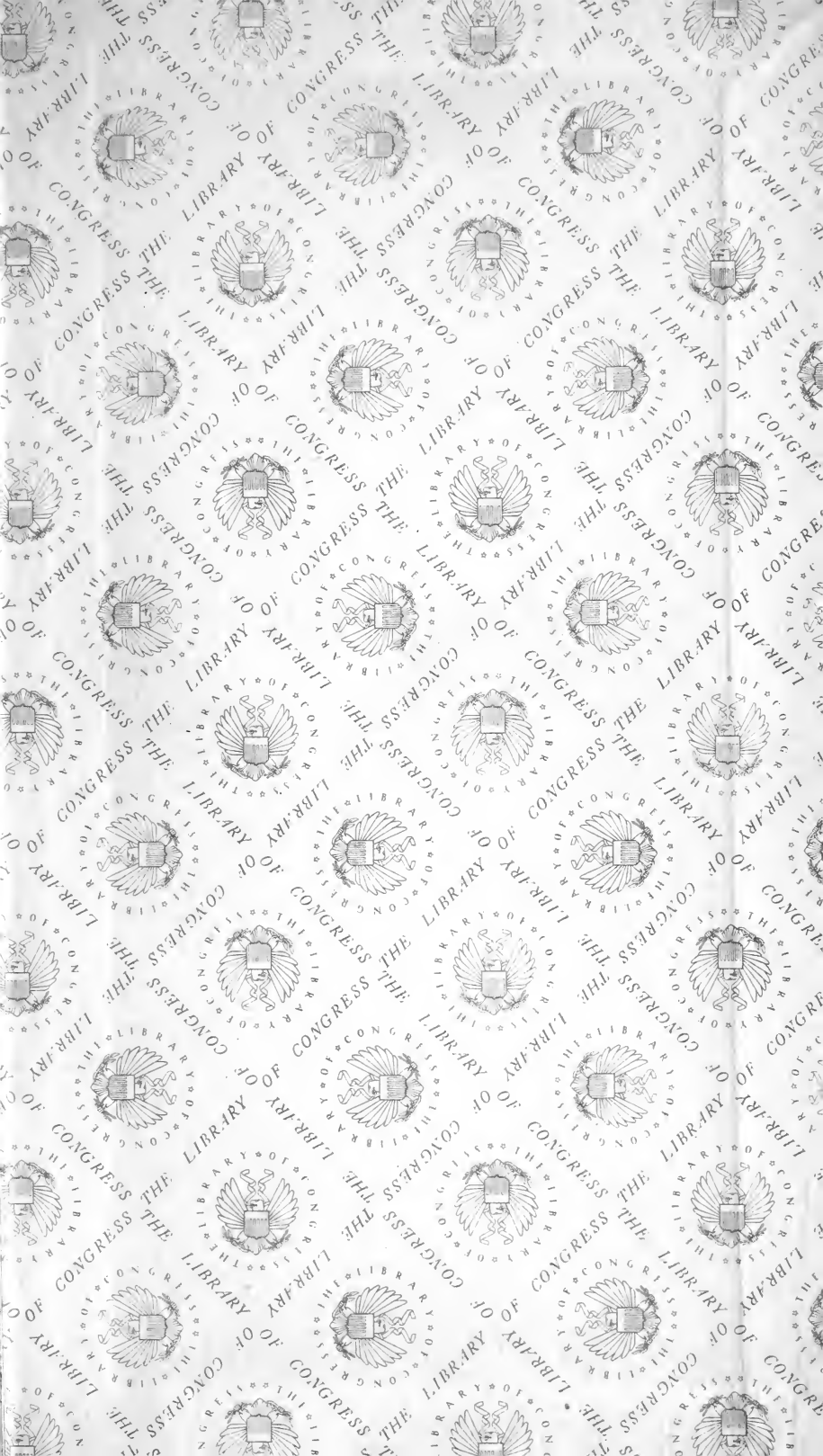
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